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# PERSONAL INJURY CASES

ILLINOIS

INCLUDING CASES UNDER DRAM-SHOP ACT  
AND ASSAULT AND BATTERY

THE LAW AND THE FACTS  
ALPHABETICALLY ARRANGED

BY  
R. WAITE JOSLYN, LL. M.  
OF KANE COUNTY BAR

CHICAGO  
T. H. FLOOD & CO.

1908

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## PREFACE.

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In compiling this book on the law of Personal Injuries in Illinois the aim has been to present all the law on the many branches of the subject, in such form that the active lawyer may find what he may be seeking, with the least effort.

Two general divisions are used: First, the law, and second, the facts. Under appropriate headings the facts and judgment of every case decided by the supreme court of Illinois will be found. Under other headings the law of the varied subjects involved in personal injury cases has been grouped. In every instance the original case has been consulted.

In view of the many cases of this character before the courts, and the absence of adequate digests on the subject, no excuse seems necessary for the attempt to gather together all the cases and all the law for quick reference.

If the book prove of service to the profession in Illinois, as a guide to the personal injury law, the aim of the author will have been accomplished.

R. WAITE JOSLYN.

*Elgin, Ill., January 25th, 1908.*



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# PERSONAL INJURIES.

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## ACTIONS.

No cause of—physician infected plaintiff's family with small-pox.

*Haas v. Tegtmeler*, 225 Ill. 275.

Against joint tort feasers—may be several or joint action.

*Parmalee Co. v. Wheelock*, 224 Ill. 194.

Covenant not to begin, is not a release of a joint tort feisor.

*C. & A. R. R. Co. v. Averill*, 224 Ill. 516.

Street car ran into wagon—when not actionable.

*C. U. T. Co. v. Leach*, 215 Ill. 184.

Who should begin for death of child—administrator.

*United Brewery Co. v. O'Donnell*, 221 Ill. 334.

Parties to—non-resident alien mother may sue in Illinois for death of her son in Illinois.

*Kellyville Coal Co. v. Petraytis*, 195 Ill. 215.

Against corporation in hands of receiver—procedure.

*Knickerbocker v. Benes*, 195 Ill. 434.

Against receiver—practice and procedure.

*Knickerbocker v. Benes*, 195 Ill. 434.

Does not lie for injury to child before birth due to injury to mother from defendant's negligence.

*Allaire v. St. Luke's Hospital*, 184 Ill. 359.

By plaintiff "for use of" not naming anyone, is not an action for use of another.

*W. C. St. Ry. Co. v. Lundahl*, 183 Ill. 284.

May be commenced in any jurisdiction where defendant may be legally served.

*C. & E. I. Ry. Co. v. Rouse*, 178 Ill. 132.

Begun in Illinois for injury in Indiana. Law of Indiana governs recovery even though conflicting with Illinois law.

*C. & E. I. Ry. Co. v. Rouse*, 178 Ill. 132.

Against receiver of corporation—damages—how collected against corporate property.

*Bartlett v. Cicero L. H. & P. Co.*, 178 Ill. 68.

By adult children of deceased.

*C. & W. I. Ry. Co. v. Ptacek*, 171 Ill. 9.

Personal injury actions are not assignable so as to prevent settlement by plaintiff.

*N. C. St. Ry. Co. v. Ackley*, 171 Ill. 100.

Against board of education do not lie for injury from negligence of—agent of state.

*Kinnare v. City of Chicago*, 171 Ill. 332.

What is cause of action—definition—what a new cause.

*I. C. R. R. Co. v. Campbell*, 170 Ill. 163.

Cause of action—defined—what is not a new cause of.

*Swift & Co. v. Madden*, 165 Ill. 41.

Cause of against owner by tenant for injury from broken drain pipe—not shown.

*Jefferson v. Jameson & Morse Co.*, 165 Ill. 138.

When barred by statute of limitations.

*Eylenfeldt v. Illinois Steel Co.*, 165 Ill. 185.

Against receiver of corporation—proper.

*Pierce, Receiver, v. Walters*, 164 Ill. 560.

No cause of shown—horse ran away in driving park injuring spectator. No action against Park Club.

*Hart v. Washington Park Club*, 157 Ill. 9.

No cause of shown—city sued railroad company to recover damages paid because of defective “approach” to crossing.

*City of Bloomington v. I. C. R. R. Co.*, 154 Ill. 539.

Joint—by wife and children under Dram Shop Act—held proper.

*Helmuth v. Bell*, 150 Ill. 263.

When city has action back against owner of defective sidewalk, where city was sued and paid damages.

*McDanel v. Logi*, 143 Ill. 487.

Against railroad in hands of trustees—procedure.

*Wisconsin Central Ry. Co. v. Ross*, 142 Ill. 9.

Against receiver—liability of.

*McNulta, Receiver, v. Lockridge*, 137 Ill. 270.

*McNulta, Receiver, v. Ensich*, 134 Ill. 47.

Under Dram Shop Act—basis for.

*McMahon v. Sankey*, 133 Ill. 637.

Against agent in charge of premises—when proper.

*Baird v. Shipman, Admr.*, 132 Ill. 16.

Against city for negligence of police officer—no cause of action—when liable.

*Culver v. City of Streator*, 130 Ill. 238.

Against insane person for personal injury—proper against his estate.

*McIntyre v. Sholtz*, 121 Ill. 660.

For personal injury survives death of injured person, when—measure of damage.

*C. & E. I. R. R. Co. v. O'Connor*, 119 Ill. 588.

Against city, at common law, for injury from defective sidewalk.

*City of Chicago v. Keefe*, 114 Ill. 222.

For death of child—may be by parents or brothers and sisters.

*City of Chicago v. Keefe*, 114 Ill. 222.

Who may sue for death of minor.

Beard v. Skeldon, 113 Ill. 584.

Against officers of corporations for illegal acts resulting in injury.

Peek v. Cooper, 112 Ill. 192.

Not against city for negligence of fireman where hook and ladder truck ran into wagon.

Willcox v. City of Chicago, 107 Ill. 334.

Survival—action begun by injured person survives to next of kin—when—procedure—Acts of 1853 and 1872 construed.

Holton v. Daly, Admr., 106 Ill. 131.

By foreign administrator—proper in Illinois.

W. St. L. & P. Ry. Co. v. Shacklet, 105 Ill. 364.

Against city—no defense that city is in debt above constitutional limit.

City of Bloomington v. Perdue, 99 Ill. 329.

In equity against receiver—not proper.

Brown v. Wabash Ry. Co., 96 Ill. 297.

No cause of action against county for personal injury.

Hollenbeck v. Winnebago Co., 95 Ill. 148.

New action within one year after non-suit—voluntary and involuntary non-suit—what is.

Holmes v. C. & A. R. R. Co., 94 Ill. 439.

For injury by vicious animals—rule.

Mareau v. Vanatta, 88 Ill. 132.

Action against city held good for neglect of police officer in directing wagons upon the street.

Kolb v. O'Brien, 86 Ill. 210.

Carrying passenger beyond station gives him right of action for any damage resulting.

I. C. R. R. Co. v. Chambers, 71 Ill. 519.

Action lies against railroad company for failing to stop for would be passenger, for actual damage shown.

*I. B. & W. Ry. Co. v. Birney*, 71 Ill. 391.

By colored woman for refusal to allow her to ride in ladies' car—proper.

*C. & N. W. Ry. Co. v. Williams*, 55 Ill. 185.

Father has no right of action where son is over twenty-one years—when.

*Mercer v. Jackson*, 54 Ill. 397.

Case is proper action where horses run away and do injury.

*Cox v. Brackett*, 41 Ill. 222.

Action lies against owner of steamboat for assault by officer on passenger.

*Loy v. Steamboat F. X. Aubury*, 28 Ill. 412.

Right of action for death of child. Act construed.

*City of Chicago v. Major*, 18 Ill. 349.

Against municipal corporation for personal injury from defective sidewalk lies.

*Browning v. City of Springfield*, 17 Ill. 142.

Against county for personal injury—no authority for.

*Hedges v. County of Madison*, 1 Gil. 566.



**AMENDMENTS.**

**IN GENERAL.**

**WHEN PROPER.**

**WHEN SUBJECT TO STATUTE OF LIMITATIONS.**

**SPECIFIC AMENDMENTS APPROVED OR DISAPPROVED.**

**a. In General.**

(See also STATUTES.)

**That conform evidence to pleadings, cure variance.**

**Ross et al. v. Shanley, 185 Ill. 390**

**Intent of statute is that substantial right be not lost through defective pleadings, diligence being shown in seeking amendment.**

**Ripley v. Leverenz, 183 Ill. 519.**

**Leave to amend granted—amendment not filed—effect.**

**Condon v. Schoenfeld, 214 Ill. 226.**

**Of all papers to conform to evidence—good.**

**Condon v. Schoenfeld, 214 Ill. 226.**

**Allowing, is discretionary—not allowed.**

**C. & A. R. R. Co. v. Logue, 158 Ill. 621.**

**Continuance—when not allowed because of.**

**Western Brewing Co. v. Meredith, 166 Ill. 306.**

**Franke v. Hanley, 215 Ill. 216.**

**Continuance—when amendment is ground for.**

**Shoninger Co. v. Mann, 219 Ill. 242.**

**At trial—when proper.**

**Sinclair Co. v. Waddill, 200 Ill. 17.**

**Eylenfeldt v. Ill. Steel Co., 165 Ill. 185.**

**Hughes v. Richter, Admr., 161 Ill. 409.**

**L. S. & M. S. Ry. Co. v. Ward, 135 Ill. 511.**

**After verdict but before judgment.**

**Monmouth M. & M. Co. v. Erling**, 148 Ill. 521.

**Chicago Screw Co. v. Weiss**, 203 Ill. 536.

**Frank v. Hanley**, 215 Ill. 216.

Amending bill of exceptions after filing—proper—use of stenographer's notes by judge allowed.

**C. M. & St. P. Ry. Co. v. Walsh**, 150 Ill. 608.

Four years after injury—allowed.

**Wall, Admx., v. C. & O. Ry. Co.**, 200 Ill. 66.

Do not aid where the evidence is insufficient.

**McCormick Mach. Co. v. Burandt**, 136 Ill. 170.

Plea of statute of limitations to—should be to amended count only.

**Pennsylvania Co. v. Sloan**, 125 Ill. 72.

In instruction—in such manner that erased words may be read—when not harmful.

**Union Ry. & T. Co. v. Kallaher**, 141 Ill. 325.

**b. When Proper—No New Cause Stated.**

When merely a re-statement of same cause of action—proper.

**N. C. St. Ry. Co. v. Aufman**, 221 Ill. 614

More than two years after injury—proper—when.

**Salmon v. Libby, McNeil & Libby**, 219 Ill. 421.

**So. Chicago C. Ry. Co. v. Kinnare**, 216 Ill. 451.

**Wabash R. R. Co. v. Bhymer**, 214 Ill. 579.

**Hinchliff v. Rudnik**, 212 Ill. 569.

**Mackey v. Northern Milling Co.**, 210 Ill. 115.

**Wall v. C. & O. Ry. Co.**, 200 Ill. 66.

**Muren Coal & Ice Co. v. Howell**, 217 Ill. 190.

**C. & E. I. Ry. Co. v. Wallace**, 202 Ill. 129.

**Wolff v. Collins, Admr.**, 196 Ill. 281.

**Chicago General Ry. Co. v. Carwell**, 189 Ill. 273.

**C. C. Ry. Co. v. McMeen**, 206 Ill. 108.

**C. C. Ry. Co. v. Cooney**, 196 Ill. 466.

**C. C. Ry. Co. v. Hackendahl**, 188 Ill. 300.

**Chicago General Ry. Co. v. Carroll**, 189 Ill. 273.

By filing additional count after two years—good if no more than re-statement of original cause.

*C. C. Ry. Co. v. Leach*, 182 Ill. 359.

When new count does not state new cause of action.

*Swift & Co. v. Foster*, 163 Ill. 51.

*Griffin Wheel Co. v. Markus*, 180 Ill. 391.

*I. C. R. R. Co. v. Welland*, 179 Ill. 609.

*I. C. R. R. Co. v. Souders*, 178 Ill. 585.

More than two years after action is commenced, amendments are proper if no new cause of action is stated in the amendment.

*Franke v. Hanley*, 215 Ill. 216.

*Chicago Screw Co. v. Weiss*, 203 Ill. 536.

An amended count after two years—when not stating new cause of action.

*Deering v. Barzak*, 227 Ill. 71.

After two years—when no new cause of action.

*Blanchard v. L. S. & M. S. Ry. Co.*, 126 Ill. 417.

*N. C. Rolling Mill Co. v. Monka*, 107 Ill. 340.

### **c. When Subject to Statute—New Cause Stated.**

Where the original declaration states no sufficient cause of action, it cannot be amended after two years from injury.

*McAndrews v. C. L. S. & E. Ry. Co.*, 222 Ill. 232.

*Klawiter v. Jones & Ill. Steel Co.*, 219 Ill. 627.

*Mackey v. Northern Milling Co.*, 210 Ill. 115.

More than two years after injury—held new cause stated.

*Mackey v. Northern Milling Co.*, 210 Ill. 115.

*Klawiter v. Jones & Ill. Steel Co.*, 219 Ill. 627.

*Gilmore v. City of Chicago*, 224 Ill. 490.

*McAndrews v. C. L. S. & E. Ry. Co.*, 222 Ill. 232.

*I. C. R. R. Co. v. Campbell*, 170 Ill. 163.

Amendment stating new cause of action is subject to statute of limitations.

*L. S. & M. S. Ry. v. Enright*, 227 Ill. 403.

Rule as to when a new count states new cause of action.

C. C. Ry. Co. v. Leach, 182 Ill. 359.

New count held to state new cause—where it states new negligence as cause of injury.

C. & A. R. R. v. Scanlan, 170 Ill. 106.

Eylenfeldt v. Ill. Steel Co., 165 Ill. 185.

What is a cause of action—what a new cause—considered.

I. C. R. R. Co. v. Campbell, 170 Ill. 163.

Changing name of street on which trolley car struck plaintiff—proper.

C. C. Ry. Co. v. McMeen, 206 Ill. 108

Changing name of street where defective sidewalk complained of is located, is stating new cause.

Gilmore v. City of Chicago, 224 Ill. 490 (206 Ill. 106 distinguished).

Adding christian name of party to action. Allowed.

Grace & Hyde Co., v. Strong, 224 Ill. 630.

#### **d. Specific Amendments.**

Changing “stumbled and fell” to “stepped upon and broke through”—allowed.

City of Evanston v. Richards, 224 Ill. 444.

After two years declaration may be amended by adding averment of due care by plaintiff.

C. C. Ry. Co. v. Cooney, 196 Ill. 466.

Adding, after two years, an allegation of a promise to repair is not stating a new cause.

I. C. R. R. Co. v. Welland, 179 Ill. 609.

**ANIMALS—INJURY BY.**

**Dog—vicious—bit boy.** Boy bitten by two dogs owned by the railroad company and kept at the depot to prevent stealing. Defendant knew dogs were vicious. Judgment for plaintiff. Affirmed.

*C. & A. R. R. Co. v. Kockkuck*, 197 Ill. 304 (6-02).

**Injury by vicious animals.** In this case horse owned by defendant kicked plaintiff's horse breaking the leg. Defendant's horse had not before shown tendency to do injury. Rule as to vicious animals reviewed. Judgment for plaintiff. Reversed for failure to prove *scienter*.

*Mareau v. Vanatta*, 88 Ill. 132.

**Plaintiff bitten by defendant's dog.** Was patting dog on head when he sprung up and bit him in face. The dog had bitten two other persons before, of which defendant had knowledge. Evidence conflicting. Judgment \$800. Affirmed.

*Keightlinger v. Egan*, 75 Ill. 141.

**Vicious dog—horse frightened by—ran away.** Judgment for defendant. Affirmed on ground that *scienter* was not proven.

*Wormley v. Gregg*, 65 Ill. 251.

**Bitten by vicious dog.** Known to be dangerous and vicious by the owner. Plaintiff admitted that he kicked the dog and dog bit him. Judgment for plaintiff. Reversed because of instruction allowing recovery if the evidence showed that the defendant knew the dog was of vicious disposition; while the declaration averred that he knew the dog was accustomed to bite mankind.

*Keightlinger v. Egan*, 65 Ill. 235.

**APPELLATE COURT.**

**AUTHORITY AS TO FACTS.  
OPINION OF—FORCE OF.  
PRESUMPTIONS AS TO.  
PRACTICE IN—RULES AS TO.**

**a. Authority to Find Facts—Rules as to.**

Authority—scope of to find facts different from jury—practice as to.

Gilmore v. City of Chicago, 224 Ill. 490.

Question of fact raised by the evidence are finally settled by.

C., R. I. & P. Ry. Co. v. Steckman, 224 Ill. 500.

C., R. I. & P. Ry. Co. v. Rathburn, 190 Ill. 572.

Iroquois F. Co. v. McCrea, 191 Ill. 340.

C. C. Ry. Co. v. Loomis, 201 Ill. 118.

Malatt, Receiver, v. Hood, 201 Ill. 202.

Donk Bros. C. & C. Co. v. Peton, 192 Ill. 41.

Decision of on facts is conclusive (but see practice act 1907).

Schaller v. Independent Brewing Co., 225 Ill. 492.

Springfield Mining Co. v. Grogan, 169 Ill. 50.

Calumet Elec. St. Ry. Co. v. Lewis, 168 Ill. 249.

Webster Mfg. Co. v. Mulvanny, 168 Ill. 311.

Probt Con. Co. v. Foley, 166 Ill. 31.

National Linseed Oil Co. v. McBlaine, 164 Ill. 597.

Appellate court finding on the facts—how far conclusive on supreme court.

Chaplin v. Ill. T. R. R. Co., 227 Ill. 169.

What facts are settled by judgment of.

Town of Wheaton v. Hadley, 131 Ill. 640.

C. B. & Q. Ry. Co. v. Bell, 112 Ill. 360.

Missouri Furnace Co. v. Abend, 107 Ill. 45.

I. & St. L. R. R. Co. v. Morgenstein, 106 Ill. 216.

What a sufficient finding of facts by.

Neer v. I. C. R. R. Co., 138 Ill. 30.

Hawk v. C. B. & N. Ry. Co., 138 Ill. 37.

Judgment of—final as to facts.

T. St. L. & K. C. R. R. Co. v. Clark, 147 Ill. 171.

Wabash Ry. Co. v. Henks, 91 Ill. 406.

Hayward v. Merrill, 94 Ill. 349.

Must find the facts where it reverses without remanding.

Siddall v. Jansen, 143 Ill. 537.

Section 89 of Practice Act making final on facts—constitutional.

C. & A. R. R. Co. v. Fisher, 141 Ill. 615.

Statute of 1877 making judgment of final as to facts held constitutional.

Toolen v. Chicago Towel Supply Co., 222 Ill. 517.

Weight of evidence finally settled by.

C. C. Ry. Co. v. Anderson, 193 Ill. 9.

P. C. C. & St. L. Ry. Co. v. Hewitt, 202 Ill. 28.

C. & A. R. R. Co. v. Flaherty, 202 Ill. 151.

Ill. Steel Co. v. Wierzbicki, 206 Ill. 201.

I. C. R. R. Co. v. Eicher, 202 Ill. 556.

Wrisley Co. v. Burke, 203 Ill. 250.

C. C. Ry. Co. v. Lowitz, 218 Ill. 26.

Voight v. Anglo-Amer. Pro. Co., 202 Ill. 462.

C. & A. R. R. Co. v. Heinrich, 157 Ill. 388.

Proximate cause is question of fact finally settled by the appellate court.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9.

When finding of is final—on affirmance or reversal—finding of facts.

Toolen v. Chicago Towel Supply Co., 222 Ill. 517.

Ill. Steel Co. v. Saylor, Admr., 226 Ill. 283.

Grace & Hyde Co. v. Strong, 224 Ill. 630.

Weeks v. C. & N. W. Ry. Co., 198 Ill. 551.

**Excess of damages—settled by finding of.**

*C. & J. Elec. Ry. Co. v. Patton*, 219 Ill. 215.

*C. C. Ry. Co. v. Anderson*, 193 Ill. 9.

**Question of damages is settled by.**

*C. M. & St. P. Ry. Co. v.* 157 Ill. 672.

**Affirmance by—implies a finding of facts. The same as the jury.**

*O. & M. Ry. Co. v. Wangelin*, 152 Ill. 138.

**Is not required to find evidentiary but only ultimate facts.**

*Papke v. Hammond Co.*, 192 Ill. 631.

**Reversal without remanding—without finding facts different—presumed reversal is on a question of law.**

*Supple v. Agnew*, 191 Ill. 439.

**Question of credibility, weight of evidence and damages settled by.**

*Heldmaier v. Taman*, 188 Ill. 283.

**Holding by, that injury was due to a fellow-servant is final as to recovery.**

*Swisher, v. I. C. R. R. Co.*, 182 Ill. 533.

### **b. Opinion of—Force of.**

**Opinion of—not assignable as error.**

*I. C. C. R. R. Co. v. Smith*, 208 Ill. 608.

*Voight v. Anglo-American Pro. Co.*, 202 Ill. 462.

*C. C. Ry. Co. v. Mead*, 206 Ill. 174.

*Toolen, Admr. v. Chicago Towel Supply Co.*, 222 Ill. 517.

*O. & M. Ry. v. Wangelin*, 152 Ill. 138.

**Opinion of not part of record.**

*Pennsylvania Co. v. Versten*, 140 Ill. 637.

*Hawk v. C., B. & N. Ry. Co.*, 138 Ill. 37.

**Opinion of on points assigned at first appeal is binding on at second appeal where evidence and verdict are the same.**

*C. & A. R. R. Co. v. Kelly*, 182 Ill. 267.



**c. Presumptions as to.**

Presumption—that appellate court has reviewed the evidence.

Voight, Admr., v. Anglo-Amer. Pro. Co., 202 Ill. 462.

Is presumed to have done its duty.

C. St. L. & P. Ry. Co. v. Gross, 133 Ill. 37.

Pennsylvania Co. v. Backes, 133 Ill. 255.

**d. Rules as to Practice in.**

Brief failing to disclose the ground of objection, waives the objection.

Spring Valley Coal Co. v. Buzis, 213 Ill. 341.

Stipulation that appellate court may enter judgment for a certain sum, if it reverses a judgment for defendant, is proper.

Wells & French Co. v. Kapaczynski, 218 Ill. 149.

Transcript—failure to file in appellate court in time fixed by statute—dismissal.

Coal Belt Elec. Co. v. Kays, 207 Ill. 632.

Recital of facts by—on reversal without remanding is not reviewable in supreme court.

Caker v. Wabash R. R. Co., 183 Ill. 223.

When affirming for incomplete record—should so state.

L. S. & M. S. Ry. Co. v. Heeslons, 150 Ill. 547.

Decision of two judges is judgment of the court.

Toolen v. Chicago Towel Supply Co., 222 Ill. 517.

Variance cannot be first raised in.

Pressed Steel Co. v. Herath, 207 Ill. 576.

First judgment—force of on second appeal.

Hinchliff v. Rudnik, 212 Ill. 569.

Reversing and remanding not final judgment so as to permit appeal to supreme court.

Spring Valley Coal Co. v. Patting, 210 Ill. 342.

Petition for rehearing—questions raised by.

C. C. Ry. Co. v. Schmidt, 217 Ill. 396.

Reversed as to one is as to all parties.

South Side "L" Ry. Co. v. Nesvig, 214 Ill. 463.

Remanding with directions—effect of.

Blakeslee Ex. & Van Co. v. Ford, 215 Ill. 230.

Practice where there is a reversal without remanding and finding of facts different from jury.

Hogan v. City of Chicago, 168 Ill. 551.

Allowing remittitur in—proper practice—costs should be taxed to plaintiff on.

Elgin City Ry. Co. v. Salisbury, 162 Ill. 187.

C. M. & St. P. Ry. Co. v. Walsh, 157 Ill. 672.

City of Elgin v. Nofs, 212 Ill. 20.

When but two judges sit and disagree the judgment is affirmed.

C. R. I. & P. Ry. Co. v. Hamler, 215 Ill. 525.

Practice where judgment is reversed without remanding.

Davis v. Chicago Edison Co., 195 Ill. 31.

Reversing without remanding—proper when.

Earnshaw v. Western Stone Co., 200 Ill. 220.

Toolen v. Chicago Towel Supply Co., 222 Ill. 517.

Disagreement when only two judges sit—judgment will stand affirmed.

C. & E. I. R. R. Co. v. Schmitz, 211 Ill. 446.

C. R. I. & P. Ry. Co. v. Hamler, 215 Ill. 525.

Appeal to—how taken—statute must be strictly followed.

Coal Belt Elec. Co. v. Kays, 207 Ill. 632.

Dismissal in—when decreed.

Coal Belt Elec. Co. v. Kays, 207 Ill. 632.

Remittitur—when error is not cured by.

Wabash R. R. Co. v. Billings, 212 Ill. 37.

C. & E. I. R. R. Co. v. Donworth, 203 Ill. 192.

C. C. Ry. Co. v. Gemmill, 209 Ill. 638.

Remittitur—proper practice—force of for appellate court.

C. C. Ry. Co. v. Gemmill, 209 Ill. 638.

Points not raised in appellate court cannot be raised in the supreme court.

Hinchliff v. Rudnik, 212 Ill. 569.

Central Union Bldg. Co. v. Kolander, 212 Ill. 27.

C. & E. I. R. R. Co. v. White, 209 Ill. 124.

Petition for rehearing—when proper—when stricken off.

C. C. Ry. Co. v. O'Donnell, 208 Ill. 267.

Motion to direct verdict raises question of weight of evidence in.

City of Beardstown v. Clark, 204 Ill. 524.

Supreme court may review finding of facts by, where there is reversal without remanding, to determine if appellate court judgment is justified by law.

Homersky v. Winkle Terra Cotta Co., 178 Ill. 562.

Reversal by without remanding on finding contributory negligence ends case.

Hawk v. C. B. & N. Ry. Co., 147 Ill. 399.

**APPEALS.**

After three trials verdict is conclusive.

*Hinchliff v. Rudnik*, 212 Ill. 569.

Weight of evidence finally determined in appellate court.

*C. & J. Elec. Ry. Co. v. Patton*, 219 Ill. 215.

*Wrisley Co. v. Burke*, 203 Ill. 250.

*P. C. C. & St. L. Ry. Co. v. Hewitt*, 202 Ill. 28.

*C. C. Ry. Co. v. Henry*, 218 Ill. 93.

*I. C. R. R. Co. v. Wierzbicky*, 206 Ill. 201.

Supreme court does not consider preponderance of evidence.

*C. & A. R. R. Co. v. Flaherty*, 202 Ill. 151.

Weight of evidence not raised in supreme court by motion to instruct the jury.

*Shoninger Co. v. Mann*, 219 Ill. 242.

*C. & A. R. R. Co. v. Raidy*, 203 Ill. 310.

*Cobb Chocolate Co. v. Knudson*, 207 Ill. 452.

*C. C. Ry. Co. v. Loomis*, 201 Ill. 118.

Weight of evidence is raised in appellate court by motion to instruct.

*City of Beardstown v. Clark*, 204 Ill. 524.

What evidence should be included in abstract of record.

*The Fair v. Hoffman*, 209 Ill. 330.

Bad instruction will not reverse if evidence clearly sustains verdict.

*National E. & S. Co. v. McCorkle*, 219 Ill. 557.

That verdict is excessive is settled by appellate court.

*C. & J. Elec. Ry. Co. v. Patton*, 219 Ill. 215.

Questions of fact are finally settled in the appellate court.

*C. C. Ry. Co. v. Loomis*, 201 Ill. 118.

Assignment of error—rules as to.

Wabash R. R. Co. v. Billings, 212 Ill. 37.

C. U. T. Co. v. Lundahl, 215 Ill. 289.

Muren Coal & Ice Co. & Howell, 217 Ill. 190.

Suggestion of damages in supreme court—when allowed.

C. U. T. Co. v. Chugren, 209 Ill. 429.

Reversing and remanding not such a final judgment as permits appeal to supreme court.

Spring Valley Coal Co. v. Patting, 210 Ill. 342.

Points not argued on appeal are waived.

Central Union Bldg. Co. v. Kolander, 212 Ill. 27.

Hinchliff v. Rudnik, 212 Ill. 569.

Spring Valley Coal Co. v. Buzis, 213 Ill. 341.

First judgment—force of on second appeal.

Hinchliff v. Rudnik, 212 Ill. 569.

Reversal as to one, reverses as to all.

South Side Elevated Ry. Co. v. Nesvig, 214 Ill. 463.

Costs—when taxed against appellee.

City of Elgin v. Nofs, 212 Ill. 20.

Remanding with special directions—effect.

Blakeslee Ex. & Van Co. v. Ford, 215 Ill. 230.

Objections not raised in motion for new trial are waived on appeal.

Odin Coal Co. v. Tadlock, 216 Ill. 624.

Stipulation that certain sum be entered as judgment in appellate court if judgment for defendant is reversed—proper.

Wells & French Co. v. Kapazynski, 218 Ill. 149.

Exclusion of evidence must harm—to reverse.

C. C. Ry. Co. v. Shaw, 220 Ill. 532.

Abstract—rules for making up.

Fetti v. C. C. Ry. Co., 211 Ill. 279.

Siegel Cooper & Co. v. Norton, 209 Ill. 201.

The Fair v. Hoffman, 209 Ill. 330.

Christy v. Elliott, 216 Ill. 31.

Ill. Third Vein Coal Co. v. Cloni, 215 Ill. 583.

Constitutional question—how raised on appeal.

Christy v. Elliott, 216 Ill. 31.

Disagreement of appellate judges—judgment is confirmed.

C. R. I. & P. R. Co. v. Hamler, 215 Ill. 525.

C. & E. I. Ry. Co. v. Schmitz, 211 Ill. 446.

Reversing without remanding—proper—when.

Earnshaw v. Western Stone Co., 200 Ill. 220.

Affirming judgment instead of dismissing writ of error—proper.

Donaldson v. Copeland, 201 Ill. 540.

Opinion of appellate court—not assignable as erroneous in supreme court.

I. C. R. R. Co. v. Smith, 208 Ill. 608.

Volght, Admx., v. Anglo-Amer. Pro. Co., 202 Ill. 462

C. C. Ry. Co. v. Mead, 206 Ill. 174.

Appeal to appellate court—how taken.

Coal Belt Elec. Co. v. Kays, 207 Ill. 632.

Dismissal in appellate court—for failure to file transcript in due time.

Coal Belt Elec. Co. v. Kays, 207 Ill. 632.

Brief to supreme court should not argue facts.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Petition for rehearing—when proper—contents.

C. C. Ry. Co. v. Schmidt, 217 Ill. 396.

C. C. Ry. Co. v. O'Donnell, 208 Ill. 267.

Remittitur—rules as to—when ineffective.

Wabash R. R. Co. v. Billings, 212 Ill. 37.

C. C. Ry. Co. v. Gemmill, 209 Ill. 638.

Appeal for delay—damages.

Spring Valley Coal Co. v. Chiaventone, 214 Ill. 314.

Ill. T. R. R. Co. v. Thompson, 210 Ill. 226.

Who shall appeal where agent is found not guilty, but principal found guilty.

Hayes v. Chicago Telephone Co., 218 Ill. 414.

Where judgment is for defendant for costs—rules as to—certificate of importance.

Haas v. Tegtmeyer, 225 Ill. 275.

Question not raised in appellate court cannot be raised in supreme court.

Central Union Bld'g. Co. v. Kolander, 212 Ill. 27.

C. & E. I. R. R. Co. v. White, 209 Ill. 214.

Reversal as to one defendant is as to all.

South Side "L" Ry. Co. v. Neavig, 214 Ill. 463.

Briefs must disclose not only the points relied on, but also the ground of objection or the point is waived.

Spring Valley Coal Co. v. Buzis, 213 Ill. 341.

Petition for rehearing—what considered on.

C. C. Ry. Co. v. Schmidt, 217 Ill. 396.

To appellate court—how taken—statute must be strictly followed.

Coal Belt Elec. Co. v. Kays, 207 Ill. 632.

For construction of statute—should be to appellate court.

Sauter et al. v. Anderson, 199 Ill. 319.

Supreme court has no jurisdiction where trial court directed verdict for defendant and appellate court affirmed the judgment and refuses to grant a certificate of importance, the judgment for costs being less than \$1,000.

Robards v. Wabash R. R. Co., 194 Ill. 361.

From appellate court—judgment under \$1,000.

Fitzpatrick v. C. & W. I. R. R. Co., 139 Ill. 248.

McNay v. Stratton, 109 Ill. 30.

Supreme court cannot review case where no question of law involved.

Swisher v. I. C. R. R. Co., 182 Ill. 533.

For delay—damages—properly allowed.

W. C. St. Ry. Co v. Nash, 166 Ill. 528.

To supreme court where judgment is for defendant for costs  
—not allowed without certificate of importance—exceptions.

Tucker v. Champaign Co. A. Board, 154 Ill. 593.

Four cases in which appeal is a constitutional right.

C. & A. R. R. Co. v. Fisher, 141 Ill. 615.

Court is presumed to have done its duty.

C. St. L. & P. Ry. Co. v. Gross, 133 Ill. 37.



**ASSAULT AND BATTERY.**

**Defendants jointly attacked plaintiff and struck and beat him. One of the defendants was a minor. Judgment \$1,300. Affirmed. Held that persons inducing an assault are equally liable with those who assault. Instruction stating that fact one defendant was a minor did not excuse him from liability.**

**Hildreth et al. v. Hancock, 156 Ill. 618.**

**Defendant pushed plaintiff about the room and threw her violently against a lounge, fracturing one of her ribs and causing other injury. Judgment \$1,000. Affirmed. The gist of the action in assault and battery. Instruction for plaintiff—general—approved. Measure of damage in assault and battery.**

**Harrison v. Ely, 120 Ill. 83 (St. L. & R. Ry. Co. v. Rector, 104 Ill. 296 distinguished).**

**Plaintiff remonstrated with police officers for rough treatment of one they had arrested. The officers turned on plaintiff and beat him with their clubs, until unconscious. They arrested him for resisting an officer. He was discharged and began suit for assault against the officers. Judgment \$5,000. Affirmed. Joint assault—all taking part will be held for damages. Measure of damage in assault and battery. Evidence of defendant's pecuniary standing good in assault.**

**Mullin et al. v. Spangenberg, 113 Ill. 140.**

**Judgment for defendant was entered in lower court and affirmed in the appellate court. The appellate court refused certificate of importance. Held there could be no appeal or writ of error to the supreme court in such case.**

**McNay v. Stratton, 109 Ill. 30.**

**Brakeman assaulted passenger who accused him of stealing his watch while he was on the train of the defendant. Action**

against the railroad company. Judgment for plaintiff. Liability of master for assault by servant—when. Liability of carrier for assault on passenger. When one riding beyond his station is passenger.

*C. & E. I. R. R. Co. v. Flexman*, 103 Ill. 546.

**Assault and battery—ejecting passenger from car.** Had paid fare to Burlington. Remained on train. Offered conductor full cash fare to destination. Conductor refused the amount as too little. Accepted fare to next station and there requested plaintiff to get off. On refusal, forced him off. No injury done. Judgment \$500.00. Reversed because of instruction on vindictive damages.

*C., B. & Q. R. R. Co. v. Bryan*, 90 Ill. 126.

**Assault and battery.** Defendants broke into plaintiff's house, took possession and put out his furniture. Difficulty occurred and plaintiff was assaulted on the head with a hammer. Judgment \$1,700. Reversed for excessive damages.

*Hennies v. Vogel*, 87 Ill. 242.

**Defendant entered plaintiff's house and terrified her with threats and abuse causing nervous shock.** Judgment for defendant. Affirmed. No cause of action.

*Phillips v. Dickerson*, 85 Ill. 11.

**Assault and battery.** Defendant beat and wounded plaintiff with a poker and buggy whip. Defendant claimed the assault was done in self-defense. Broke bones in left hand. Judgment \$800. Affirmed.

*Demick v. Downs*, 82 Ill. 570.

**Assault and battery.** Defendant struck plaintiff on the head with a padlock inflicting injuries and causing erysipelas. Injuries probably permanent. Judgment \$2,750. Affirmed.

*Drohn v. Brewer*, 77 Ill. 280.

**Assault and battery.** Defendant struck plaintiff on the head with iron bar. Plaintiff had demanded payment of an overdue note. Plaintiff called him a swindler. Judgment \$600. Affirmed.

*Sorgenfrei v. Schroeder*, 75 Ill. 397.

**Assault and battery.** Defendant threatened plaintiff with a pistol and while so doing severely punished him with a horse-whip. The assault was deliberate and had been contemplated for months. Judgment \$1,000. Affirmed.

*Mitchell v. Robinson*, 72 Ill. 382.

**Defendant ejected plaintiff from his premises with unnecessary force**—struck her on the side of head—kicked her while she was trying to leave the house—kicked her off the porch and through the gate and followed her into the road and threw her against the fence. Judgment for plaintiff. Affirmed.

*Jones v. Jones*, 71 Ill. 562.

**Assault and battery.** Policeman arrested plaintiff compelling her to get out of bed and go to police station—beat and ill-treated her. Judgment \$775. Affirmed.

*Ryan v. Donnelly*, 71 Ill. 100.

**Assault and battery.** Plaintiff was severely beaten by two other persons without provocation. Judgment \$1,250. Affirmed.

*Scott v. Hamilton*, 71 Ill. 85.

**Assault and battery.** Plaintiff's brother and defendant had a quarrel and the defendant was knocked down. When defendant arose he struck plaintiff with a knife wounding his arm. Defendant testified he thought plaintiff had hold of him when he got up; and that he was acting in self defense. Judgment \$450. Reversed because of a special finding inconsistent with the general verdict. The special finding being that defendant struck without malice, and believing he was acting in self-defense.

*Paxton v. Boyer*, 67 Ill. 132.

**Assault.** Plaintiff and defendant had had a law suit in the circuit court which had just been finished. Thereupon the defendant deliberately in the presence of a number of people, spat in the face of the plaintiff. Judgment \$1,000. Affirmed.

Alcorn v. Mitchell, 63 Ill. 553.

**Assault and battery.** The father of plaintiff put her out of his house, because of her abuse of his wife, her step-mother. Daughter had been married, but left her husband and was living with her father. Defendant attempted to put her out; she resisted. Judgment \$10,000. Reversed—evidence against the verdict.

Smith v. Slocum, 62 Ill. 354.

**Assault in placing child in buggy against her will.** Horses ran away throwing child out. Permission of mother set up as defense. Held no defense as the father alone had the power to control the child's person. (Same case as 44 Ill. 189.) Judgment \$1,000. Affirmed.

Pierce v. Millay, 62 Ill. 133.

**Police officers assaulted prisoner.** Plaintiff was accused of stealing. Defendants took him to outskirts of town and pretended they were about to hang him, to compel him to confess—producing a rope. Judgment \$150. Affirmed.

Stalling v. Owens, 51 Ill. 92.

**Assault by landlord on one of his guests.** Judgment \$600. Affirmed.

Kelsey v. Henry, 49 Ill. 488.

**Deceased killed by pistol shot fired by defendant.** Action by administrator. Next of kin, widow and minor son. Discussion of damages to next of kin. Judgment \$5,000. Reversed because damages excessive.

Conant v. Griffin, Admr., 48 Ill. 410.

**Assault and battery.** Defendant placed plaintiff, a child six years old, in his buggy to drive to his farm. The horses ran away throwing plaintiff. Arm permanently injured. The assault claimed was putting child in the buggy, against her will. (Same case 62 Ill. 133.) Judgment \$4,000. Reversed on ground no assault shown.

Pierce v. Millay, 44 Ill. 189.

**Assault and battery.** Plaintiff raped by defendant. Plaintiff willingly rode with defendant knowing his intent. Judgment for defendant. Reversed on ground that knowledge of defendant's purpose does not excuse him.

Dickey v. McDonnell, 41 Ill. 62.

**Assault and battery.** Defendant struck plaintiff upon the head with a pistol knocking him down. Plaintiff first assaulted defendant, but did him no injury. Judgment for defendant. Reversed on ground defendant used more force than necessary to meet plaintiff's assault.

Boren v. Bartleson, 39 Ill. 43.

**Assault and battery.** Defendant stabbed plaintiff with a knife. Judgment for defendant. Reversed on ground that only part of evidence given by defendant at criminal trial of same offense was admitted. The whole conversation should have been allowed as an admission of defendant.

Aulger v. Smith, 34 Ill. 534.

**Passenger on steamboat assaulted by officer of boat.** Action against owner. Judgment for plaintiff. Arrested on motion in circuit court. Reversed with directions to enter judgment for plaintiff on verdict.

Loy v. Steamboat F. X. Aubury, 28 Ill. 412.

**Assault and battery.** Joint action. Defendants tied and whipped plaintiff whom they accused of stealing a watch. Plaintiff weak-minded. Judgment \$600. Affirmed.

Ously v. Hardin, 23 Ill. 352.

**Assault and battery.** Passenger had no ticket. Agent had no tickets at office. Plaintiff had applied to him. Ejected from car after scuffle. Judgment \$1,000. Affirmed. Full discussion of liability of corporation for assault by its servants—held liable.

*St. L. A. & C. Ry. Co. v. Dalby*, 19 Ill. 352.

**Assault and battery.** Defendant attacked plaintiff with a hoe; knocked her down; broke one finger. Defendant worth \$10,000. Judgment \$1,000. Affirmed.

*Slater v. Rink*, 18 Ill. 527.

**Assault and battery.** The defendants blindfolded plaintiff, pretended to bleed him and worked upon his mind by deception and threats of hanging him until he gave them about \$14 to be released. No personal hurt was done. Judgment \$700. Affirmed.

*Blanchard et al. v. Morris*, 15 Ill. 35.

**Assault and battery.** Defendant attacked plaintiff with deadly weapon. Disabled several weeks. Judgment \$650. Affirmed.

*McNamara v. King*, 2 Gil. 432.

**Assault and battery.** No facts stated. Judgment for defendant. Reversed on ground that in action for assault the assault may be proven to have occurred anywhere in the jurisdiction. Not confined to declaration.

*Hurley v. Marsh*, 1 Scammon, 328.

#### Points of law.

Reference to former trial—reversible error—\$1,700 held excessive for assault and battery.

*Hennies v. Vogel*, 87 Ill. 242.

Declaration in an action by a party assaulted by an intoxicated person, against the saloon keeper—held sufficient.

*King v. Haley*, 86 Ill. 106.

Evidence of injury to defendant is competent in assault and battery.

*Demick v. Downs*, 82 Ill. 570.

What proper as to plaintiff's use of intoxicants—exemplary damages—when allowed in assault and battery.

*Drohn v. Brewer*, 77 Ill. 280.

Two thousand seven hundred and fifty dollars (\$2,750) held not excessive in assault and battery.

*Drohn v. Brewer*, 77 Ill. 280.

Calling one a swindler is not a proper provocation for assault and battery.

*Sorgenfrei v. Schroeder*, 75 Ill. 397.

Six hundred dollars is not excessive damages for assault and battery.

*Sorgenfrei v. Schroeder*, 75 Ill. 397.

One thousand dollars not excessive for assault unprovoked, where plaintiff was severely horsewhipped.

*Mitchell v. Robinson*, 72 Ill. 383.

That defendant acted in self defense is good defense in assault and battery.

*Paxton v. Boyer*, 67 Ill. 132.

Declarations of plaintiff to his attending physician as to how he was assaulted—improper.

*Collins v. Waters*, 54 Ill. 486.

Actual violence unnecessary in assault and battery.

*Stalling v. Owens*, 51 Ill. 92.

Exemplary damages are allowed for assault.

*Kelsey v. Henry*, 49 Ill. 488.

Six hundred dollars for unprovoked assault—not excessive.

*Kelsey v. Henry*, 49 Ill. 488.

Self-defense in assault and battery—only necessary force must be used to repel assault.

*Boren v. Bartleson*, 39 Ill. 43.

Six hundred and eighty-three dollars not excessive for aggravated assault.

*Foote v. Nichols*, 28 Ill. 486.

One thousand dollars not excessive for assault and battery.

**Slater v. Rink**, 18 Ill. 527.

Instruction in assault and battery—bad.

**Slater v. Rink**, 18 Ill. 527.

Proof that plaintiff is a poor man with a large family—held competent in assault and battery—when.

**McNamara v. King**, 2 Gil. 432.

Exemplary damages—allowed in assault and battery as punishment.

**McNamara v. King**, 2 Gil. 432.



**ASSIGNMENT OF ERRORS.**

Cannot be had by the party causing the error.

C. U. T. Co. v. Lundahl, 215 Ill. 289.

Objection must be made in trial court.

Muren Coal & Ice Co. v. Howell, 217 Ill. 190.

Objections not raised on motion for new trial cannot be assigned.

Odin Coal Co. v. Tadlock, 216 Ill. 624.

Variance—not assignable unless raised at trial.

C. C. Ry. Co. v. McClain, 211 Ill. 589.

C. U. T. Co. v. Newmiller, 215 Ill. 383.

Errors not assigned in appellate, not reviewable in supreme court.

Wabash Ry. Co. v. Billings, 212 Ill. 37.

C. & E. I. R. R. Co. v. White, 209 Ill. 124.

Errors to be assigned must be duly saved in trial court.

Odin Coal Co. v. Tadlock, 216 Ill. 624.

Spring Valley Coal Co. v. Patting, 210 Ill. 342.

Overruling motion for new trial—how assigned.

C. & E. I. R. R. Co. v. Schmitz, 211 Ill. 446.

Error not assignable on opinion of appellate court—on judgment only.

O. & M. Ry. Co. v. Wangelin, 152 Ill. 138.

Voight, Admx., v. Anglo-Amer. Pro. Co., 202 Ill. 462.

C. C. Ry. Co. v. Mead, 206 Ill. 174.

I. C. R. R. Co. v. Smith, 208 Ill. 608.

Error in instruction waived if not raised on motion for new trial.

Odin Coal Co. v. Tadlock, 216 Ill. 624.

On pleadings—must be made on first appeal.

Muren Coal & Ice Co. v. Howell, 217 Ill. 190.

Not referred to in brief are waived.

I. C. R. R. Co. v. Davenport, 177 Ill. 110.

Overruling motion for new trial is assignable.

C. & A. R. R. Co. v. Heinrich, 157 Ill. 388.

Abandoned if not argued in brief.

City of Mt. Carmel v. Howell, 137 Ill. 91.

Harris v. Shebek, 151 Ill. 287.

Goldie v. Werner, 151 Ill. 552.

T., St. L. & K. C. R. R. Co. v. Clark, 147 Ill. 171.

That instruction is erroneous—not good where objector secured instruction containing same error.

City of Beardstown v. Smith, 150 Ill. 169.

Not allowed on opinion of appellate court.

Pennsylvania Co. v. Keane, 143 Ill. 172.

**ASSUMED RISK.**

IN GENERAL, p. 33.  
GENERAL RULES AS TO, p. 33.  
NOT SHOWN, p. 34.  
SHOWN, p. 36.  
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**RULES AS TO ASSUMED RISK.**

**Rule 1.** Where the proximate cause of an injury is an assumed risk, there can be no recovery of damages.

**Rule 2.** The rule as to assumed risk applies only as between master and servant.

**Rule 3.** A servant assumes the risk of injury from all dangers ordinarily incident to the service for which he was employed, and also such dangers as he has actual knowledge of, or of which he may reasonably be presumed to have learned, or be put upon notice as to, if he had exercised ordinary care under the conditions shown by the evidence.

**Rule 4.** A servant does not assume the risk of injury from a danger of which he knows if he has complained of the same and

has been promised by one in authority that the danger will be removed. In such case he may continue in the place of danger a reasonable time for repairs, unless the danger is so imminent that a reasonably prudent man would quit the service rather than incur the danger.

**Rule 5.** A servant does not assume the risk of injury from the failure of the master or his vice principal to perform a duty imposed on the master, unless he knows of such negligence or by the exercise of ordinary care may be reasonably presumed to have learned of it or be put upon notice as to it.

**Rule 6.** A servant cannot be said to have notice of a danger or to be put on notice as to same so as to assume a risk, if reasonable minds would differ as to his having such notice.

**Rule 7.** A servant does not assume the risk of injury from a danger of which he knows, if he is working under immediate orders of the master or his vice principal, unless the danger is so imminent that a reasonably prudent man would quit the service rather than incur the danger.

#### a. In General.

In general. Distinguished from contributory negligence.

C. & E. I. R. R. Co. v. Heerey, 203 Ill. 492.

#### b. General Rule as to What is Assumed.

Risks assumed include those incident to the service but also those known or which ordinary care would discover—rule.

I. C. R. R. Co. v. Fitzpatrick, 227 Ill. 478.

The servant assumes the risk of injury from the master's negligence, if he knows of the danger and continues without complaint.

Republic Iron & S. Co. v. Lee, 227 Ill. 246.

Rule as to—what constitutes.

- E. J. & E. Ry. Co. v. Myers, 226 Ill. 353.
- Sargent Co. v. Baublis, 215 Ill. 428.
- Trakal v. Huesner Baking Co., 204 Ill. 179.
- C. & A. R. R. Co. v. Bell, 209 Ill. 25.
- C. & E. I. R. R. Co. v. White, 209 Ill. 124.

Where work is naturally dangerous.

- Hansell Elcock F. Co. v. Clark, 214 Ill. 399.
- Pressed Steel Co. v. Herath, 207 Ill. 576.

Only such risks as the exercise of due diligence by the master would not obviate.

- Western Stone Co. v. Muscial, 196 Ill. 382.

Not where the master conducts the work in an unusual manner.

- Street's Stable Car Line v. Bonander, 196 Ill. 15.

Rule does not hold that servant assumes every risk incident to employment—not of an unusual explosion.

- Ill. Steel Co. v. Bauman, 178 Ill. 351.

Servant assumes only ordinarily incident, not extraordinary risks.

- C. & N. W. Ry. Co. v. Gillison, 173 Ill. 264.
- C. & A. Ry. Co. v. House, 172 Ill. 601.

Not of unknown dangers, not obvious.

- Whitney & S. Co. v. O'Bourke, 172 Ill. 177.

When does not apply—car kicked back.

- Pennsylvania Co. v. Backes, 133 Ill. 255.

Rule as to stated.

- Coal Run Coal Co. v. Jones, Admx., 127 Ill. 378.
- C., R. I. & P. Ry. Co. v. Lonergan, 118 Ill. 41.
- U. S. Rolling Stock Co. v. Wilder, 116 Ill. 100.

### c. Facts Held Not to Show.

Evidence of insufficient

- Sinclair Co. v. Waddill, 200 Ill. 17.

By servant of city working in excavating sewer, that caved in.

- City of La Salle v. Kostka, 190 Ill. 131.

From gravel pile left near track. Watchman fell over. Doctrine of.

C., R. I. & P. Ry. Co. v. Kinnare, 190 Ill. 9.

By miner of weak mine wall that fell upon him.

Consolidated Coal Co. v. Gruber, 188 Ill. 584.

The falling of a lumber pile on employee while passing near it is not an.

John Spry Lumber Co. v. Duggan, 182 Ill. 218.

Not of unseen, not obvious danger—tunnel caved in.

Ross et al. v. Skanley, 185 Ill. 390.

Not shown where servant disobeyed rule of railroad company—when.

C. & W. J. R. R. Co. v. Flynn, 154 Ill. 448.

When "helper" in switching yard does not assume danger from defective brake.

C. & E. I. R. R. Co. v. Kneirim, 152 Ill. 438.

Of negligence of fellow servant—when not shown.

Western Stone Co. v. Whalen, 151 Ill. 473.

Held not shown.

Leighton, etc. Steel Co. v. Snell, 217 Ill. 152.

So. Chicago C. Ry. v. Kinnare, 216 Ill. 451.

C. & E. I. R. R. Co. v. Crose, 214 Ill. 602.

Central Ry. Co. v. Auklewicz, 213 Ill. 631.

Henrietta Coal Co. v. Campbell, 211 Ill. 216.

Ill. T. R. R. Co. v. Thompson, 210 Ill. 226.

C. C. Ry. Co. v. Gemmill, 209 Ill. 638.

C. & A. R. R. Co. v. Pulliam, 208 Ill. 456.

C. & A. R. R. Co. v. Howell, 208 Ill. 155.

Missouri Mall. I. Co. v. Dillon, 206 Ill. 145.

P. C. C. & St. L. Ry. Co. v. Robson, 204 Ill. 254.

Slack v. Harris, 200 Ill. 96.

Where building was being reconstructed and timber fell upon workman—when not presumed.

American Car Co. v. Hill, 226 Ill. 227.

Of latent danger from a live wire—not.

Postal Tel. Cable Co. v. Likes, 225 Ill. 249.

Where scaffolding fell with workman. Defect could have been seen if he had looked—not shown.

Schillinger Bros. Co. v. Smith, 225 Ill. 74.

Where derrick fell owing to absence of guy rope.

Grace & Hyde Co. v. Sanbam, 225 Ill. 138.

In steel mill accident—not.

Ill. Steel Co. v. Ziemkowski, 220 Ill. 324.

Of unguarded cog-wheels—not—rule as to care required.

Rock Island Sash Wks. v. Pohlman, 210 Ill. 133.

Pole too near track—not—extraordinary risk.

Ill. Term. R. R. Co. v. Thompson, 210 Ill. 226.

Of unseen danger.

Ill. Steel Co. v. Olste, 214 Ill. 181.

Of defective insulation.

Rowe v. Taylorville Elec. Co., 213 Ill. 318.

Of defective rope—Knowledge of defect—working under orders.

Ill. Steel Co. v. Wierzbicky, 206 Ill. 201.

Chicago H., etc. Co. v. Mueller, 203 Ill. 558.

Wrisley Co. v. Burke, 203 Ill. 250.

Momence Stone Co. v. Turrel, 205 Ill. 515.

Of barrel falling off platform in store—no railing.

Armour v. Galkowski, 202 Ill. 144.

Of defective coupling apparatus on car—Act of Congress.

Malott, Receiver, v. Hood, 201 Ill. 202.

#### **d. Facts Held to Show.**

Assumed risk held shown.

Chaplin v. Ill. T. R. R. Co., 227 Ill. 169.

Where servant slipped on greasy floor and fell upon open cog-wheels, it being his duty to keep floor in good condition.

Christianson v. Graver Tank Works, 223 Ill. 142.

What probably sufficient to show.

*C. & E. I. R. R. Co. v. Heerey*, 203 Ill. 492.

Where servant fell from platform owing to absence of guard or railing. Shown—defect obvious.

*Davis v. Chicago Edison Co.*, 195 Ill. 31.

Shown—where servant does work in a dangerous manner at the suggestion of one not his master.

*Homersky v. Winkle Terra Cotta Co.*, 178 Ill. 562.

Held shown as a matter of law. Porter walked into open elevator shaft—acquainted with premises.

*Browne v. Siegel Cooper & Co.*, 191 Ill. 226.

Held shown as a matter of law—brakeman caught foot in unblocked “frog.”

*I. C. R. R. Co. v. Campbell*, 170 Ill. 163.

Held shown—bank caved in.

*Simmons v. C. & T. R. R. Co.*, 110 Ill. 340.

By engineer of collision with wild train—shown.

*Clark v. C., B. & Q. Ry. Co.*, 92 Ill. 43.

Evidence held to show.

*Pennsylvania Co. v. Lynch*, 90 Ill. 333.

In coupling cars—held shown—rule.

*T. W. & W. Ry. Co. v. Black*, 88 Ill. 112.

Of danger from insufficient help—when.

*C. & E. I. Ry. Co. v. Geary*, 110 Ill. 383.

### c. Rule Where Servant Works Under Orders.

(See also **ORDERS, WORKING UNDER.**)

Rule does not apply where servant is working under orders of foreman.

*N. C. St. Ry. Co. v. Aufman*, 221 Ill. 614.

When acting under orders.

*Slack v. Harris*, 200 Ill. 96.

*Hartrich v. Hawes*, 202 Ill. 334.

*C. & E. I. Ry. Co. v. Heerey*, 203 Ill. 492.

*Cabb Chocolate Co. v. Knudson*, 207 Ill. 452.



When servant acts under orders with knowledge of danger—rule stated.

*Ill. Steel Co. v. McFadden*, 196 Ill. 344.

Held not shown. Where servant is working under immediate orders of foreman—rule.

*Graver Tank Works v. O'Donnell*, 191 Ill. 236.

Not shown where servant is acting under direct orders of foreman, though the work is dangerous. Rule.

*Offutt v. Columbian Ex.*, 175 Ill. 472.

Working near an ore pile by foreman's order—held not, though servant knew of some danger.

*Ill. Steel Co. v. Schymanowski*, 162 Ill. 447.

#### **f. When a Question of Fact.**

Facts held not showing as matter of law.

*Chicago Suburban Water Co. v. Hyslop*, 227 Ill. 308.

When a question of fact—rule stated.

*Jones & Adams Co. v. George*, 227 Ill. 64.

Of danger is question of fact for jury.

*N. C. St. Ry. Co. v. Dudgeon*, 184 Ill. 477.

Is for jury where evidence is conflicting.

*Watson Cut Stone Co. v. Small*, 181 Ill. 366.

#### **g. Rule Where Promise to Repair Has Been Made.**

(See also PROMISE TO REPAIR.)

After complaint and promise to repair—what is reasonable time to allow—full discussion of doctrine.

*Gunning System v. Lapointe*, 212 Ill. 274.

Even though master has promised to repair.

*Webster Mfg. Co. v. Nisbett*, 205 Ill. 273.

Where, although servant knows of some danger, promise to repair has been made—discussion of rule as to.

*Swift & Co. v. O'Neill*, 187 Ill. 337.

Probably shown where servant continued working long after a promise to repair had been made.

*Ill. Steel Co. v. Mann*, 170 Ill. 200.

#### **h. Rule Where Injury is Due to Master's Own Negligence.**

Master's negligence is assumed if servant knows of danger and makes no complaint.

*Republic I. & S. Co. v. Lee*, 227 Ill. 246.

Not when cause of injury is negligence of foreman.

*C., R. I. & P. Ry. Co. v. Rathman*, 225 Ill. 278.

Where workman was being lowered in chimney by foreman, and swing tipped.

*Springfield Boiler Mfg. Co. v. Parks*, 222 Ill. 355.

Not where injury results from negligence of master or his vice principal.

*Metcalf Co. v. Nystedt*, 203 Ill. 333.

*C. & J. T. Ry. Co. v. Spurney*, 197 Ill. 471.

*Himrod Coal Co. v. Clark*, 197 Ill. 514.

*McGregor v. Reld, Murdock & Co.*, 178 Ill. 464.

Rule as to—held not shown—negligence of foreman.

*Pittsburg Bridge Co. v. Walker*, 170 Ill. 550.

Not of master's own negligence—when.

*U. S. Rolling Stock Co. v. Wilder*, 116 Ill. 100.

*C., B. & Q. Ry. Co. v. Avery*, 109 Ill. 314.

Not of master's own negligence—defective valve.

*Pullman Palace Car Co. v. Laack*, 143 Ill. 243.

Lack of opportunity to observe a defect, negatives.

*C. & E. I. R. R. Co. v. Kneirim*, 152 Ill. 438.

Not of latent dangers—mine accident.

*Consolidated Coal Co. v. Wornbacher*, 134 Ill. 64.

#### **i. Rules When Servant Has Knowledge of Defect.**

The servant assumes the risk of injury from the master's negligence, if he knows of the danger and continues without complain.

*Republic Iron & S. Co. v. Lee*, 227 Ill. 246.

Based on knowledge of danger.

Illinois Terra Cotta L. Co. v. Hanley, 214 Ill. 243.

McCormick H. Mach. Co. v. Zakzewski, 220 Ill. 522.

Where there was knowledge of danger.

Hansell Elcock F. Co. v. Clark, 214 Ill. 399.

Of section hand—when knowledge of custom, is not.

I., I. & I. R. R. Co. v. Otstot, 212 Ill. 429.

Of defective machine—where master and servant know of defect.

Chicago Screw Co. v. Weiss, 203 Ill. 536.

Does not arise from knowledge of defect alone, but must be of danger.

Union Show Case Co. v. Blindauer, 175 Ill. 325.

Is not shown by proof of knowledge of some danger.

Dallemand v. Saalfeldt, 175 Ill. 310.

Of latent defect—knowledge must be shown.

Missouri Furnace Co. v. Abend, 107 Ill. 45.

#### **j. Rule Where a Statute is Violated by Defendant.**

(See also STATUTES.)

Where statute has been violated—when.

Landgraf v. Kuh, 188 Ill. 484.

Riverton Coal Co. v. Shepherd, 207 Ill. 395.

Does not excuse violation of statutory duty.

B. & O. R. R. Co. v. Alsop, 176 Ill. 470.

#### **k. Rule Where Servant Was Assured There Was No Danger.**

Not where servant is assured by foreman there is no danger.

Gundlach v. Schott, 192 Ill. 509.

Consolidated Coal Co. v. Shepherd, 220 Ill. 123.

See also *Assurance of Safety*.

#### **l. Rule as Applied to Children.**

By child—cannot be shown—when.

Stiegel Cooper & Co. v. Trcka, 218 Ill. 559.

Not by children, as a rule—doctrine.

*Helman v. Kinnare*, 190 Ill. 157.

By boy fourteen years of age after notice of danger—rule—  
not shown.

*Swift & Co. v. Rutkowski*, 167 Ill. 157.

*Swift & Co. v. Rutkowski*, 182 Ill. 18.

By minor—rule as to.

*Chicago Anderson Pressed Brick Co. v. Reinneiger*, 140 Ill. 334.

How far applicable to children.

*Hinckley v. Horazdowsky*, 133 Ill. 359.

### **m. When Rule as to Does Not Apply.**

When an important and decisive element even though relation  
of master and servant does not exist—doctrine as to.

*North Amer. Rest. & Oyster House v. McElligott, Admr.*, 227 Ill.  
317.

Do not apply where passenger on street car is injured.

*U. C. T. Co. v. Schritter*, 222 Ill. 364.

Not in any case, except where a contractual relation exists  
between plaintiff and defendant.

*C. & E. I. R. R. Co. v. Randolph*, 199 Ill. 126.

*Shoninger Co. v. Mann*, 219 Ill. 242.

Evidence as to—incompetent until contractual relation is  
shown.

*Shoninger Co. v. Mann*, 219 Ill. 242.

When rule as to does not apply.

*McCormick Mch. Co. v. Burandt*, 136 Ill. 170.

Assuming danger from incompetent servant—not unless known  
to be incompetent.

*U. S. Rolling Stock Co. v. Wilder*, 116 Ill. 100.

### **n. Not of Danger Outside Scope of Regular Service.**

While working outside regular employment.

*Grace & Hyde Co. v. Probst*, 208 Ill. 147.

*C. & A. R. R. Co. v. Howell*, 208 Ill. 155.

Is confined to service contemplated by the contract of employment, not outside work.

Supple v. Agnew, 191 Ill. 439.

Grace & Hyde Co. v. Probst, 208 Ill. 147.

Where servant is injured while working outside regular employment by order of foreman.

Supple v. Agnew, 191 Ill. 439.

Is of dangers ordinarily incident only; not of those outside regular employment.

Consolidated Coal Co. v. Haenni, 146 Ill. 614.

#### **o. Instructions Relating to.**

(See also INSTRUCTIONS ON ASSUMED RISK.)

Instructions as to.

Ill. Steel Co. v. Ryska, 200 Ill. 280.

Cabb Chocolate Co. v. Knudson, 207 Ill. 452.

C. W. & V. Coal Co. v. Moran, 210 Ill. 9.

Ill. T. R. R. Co. v. Thompson, 210 Ill. 226.

Ill. Terra Cotta L. Co. v. Hanley, 214 Ill. 243.

#### **p. Practice as to Saving Question.**

(See also PRACTICE.)

When question as to is raised by an instruction.

E. J. & E. Ry. Co. v. Myers, 226 Ill. 358.

#### **q. Pleadings as to.**

(See also PLEADINGS.)

Omission of instruction on—held not error where declaration negatives—held negatived.

Kirk & Co. v. Jajko, 224 Ill. 338.

#### **r. Miscellaneous Rules.**

Of danger from railroad trains—relying on performance of duty.

E. J. & E. Ry. Co. v. Hoadley, Admx., 220 Ill. 463.

By miner.

*Ill. Third Vein Coal Co. v. Cloni*, 215 Ill. 583.  
*Leighton, etc. Steel Co. v. Snell*, 217 Ill. 152.

Not where statute violated wilfully.

*Riverton Coal Co. v. Shepherd*, 207 Ill. 395.

Where servant is assured by foreman there is no danger. Defective belt caught hand.

*Gundlach v. Schott*, 192 Ill. 509.

Where master fails to supply sufficient help and injury is caused by.

*Supple v. Agnew*, 191 Ill. 439.

Of absence of fire escapes on building where required by statute.

*Landgraf v. Kuh*, 188 Ill. 484.

Rule as to where servant must act quick or where there is a sudden danger.

*C. & E. I. R. R. Co. v. Kneirim*, 152 Ill. 438.

Rule as to stated—hand caught in machinery—inexperienced servant.

*Herdman-Harrison U. Co. v. Spehr*, 145 Ill. 329.

A servant continuing work with knowledge of danger assumes the risk where he makes no complaint.

*C. & A. R. R. Co. v. Munroe*, 85 Ill. 25.

Assumed risk held shown—brakeman injured by defective coupling—rule as to.

*I. B. & W. Ry. Co. v. Flanigan*, 77 Ill. 365.

Assumed risk of collision because of defective brake known to servant—held shown.

*St. L. & S. E. Ry. Co. v. Britz*, 72 Ill. 256.

One walking on track in public street assumes the risk of being run down by train.

*I. C. R. R. Co. v. Hall*, 72 Ill. 222.

Assumed risk shown. Brakeman injured moving defective cars to shop. He knew they were defective.

C. & N. W. Ry. Co. v. Ward, 61 Ill. 130.

Assumed risk held shown—construction train derailed—laborer injured.

Moss v. Johnson, 22 Ill. 633.

Risks assumed by passengers—all incident to mode of travel selected.

G. & C. U. R. R. Co. v. Fay, 16 Ill. 558.

**ASSURANCE OF SAFETY.**

By boss; excuses inspection by servant.

*C. & E. I. R. R. Co. v. Driscoll*, 207 Ill. 9.

Evidence of—by superintendent—competent.

*Siegel Cooper & Co. v. Norton*, 209 Ill. 201.

Does not excuse contributory negligence.

*Baier v. Selke*, 211 Ill. 512.

By foreman—force of.

*C. W. & V. Coal Co. v. Moran*, 210 Ill. 9.

Relieves servant of assumed risk.

*Consolidated Coal Co. of St. L. v. Shepherd*, 220 Ill. 123.

When it will negative assumed risk—rule—not here.

*E. J. & E. Ry. Co. v. Myers*, 226 Ill. 358.

Where made two months before injury—no force.

*E. J. & E. Ry. Co. v. Myers*, 226 Ill. 358.

By foreman—that there is no danger, negatives assumed risk of known danger—when.

*Gundlach v. Schott*, 192 Ill. 509.

*Anderson Pressed Brick Co. v. Sobkowiak*, 148 Ill. 573.

Servant may rely on master's statement that place is safe—when.

*Kewanee Boiler Co. v. Erickson*, 181 Ill. 549.



**AUTOMOBILES.**

**Horse frightened by.** Horse frightened by automobile. Driver thrown out. Violation of speed law. Act held constitutional. Judgment \$1,250. Affirmed.

Christy & Elliott, 216 Ill. 31 (6-'05).

**Horse frightened by—Automobile Act.** Automobile running 15 miles an hour in violation of statute, frightened horse, which turned into ditch overturning buggy and throwing plaintiff out. Prima facie case under statute. Judgment for plaintiff. Affirmed.

Ward v. Isabell Meredith, 220 Ill. 66 (2-'06).

**CARRIERS OF PASSENGERS.**

RAILROAD COMPANIES.  
 OMNIBUS COMPANIES.  
 OWNERS OF VESSELS.  
 STREET RAILWAY COMPANIES.  
 ELEVATOR OPERATORS.  
 PASSENGERS—WHO ARE.  
 TRESPASSERS.  
 AS TO RIGHT OF WAY.  
 NEGLIGENCE BY.  
 RELEASE GIVEN TO  
 MISCELLANEOUS RULES.

**a. Railroad Companies.**

Duty of—to lower gates and ring bell.

C. & A. R. R. Co. v. Wise, 206 Ill. 453.

Care required by—rule—railroad companies.

C. T. T. R. R. Co. v. Schmelling, 197 Ill. 619.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

C. & A. R. R. Co. v. Murphy, 198 Ill. 462.

Railroad companies—when responsible for injury to passengers alighting from train.

Pennsylvania Co. v. McCaffrey, 173 Ill. 168.

Of railroad company—care required in allowing passengers to alight.

C. & A. R. R. Co. v. Byrum, 153 Ill. 131.

Of railroad company care required—train jumped track.

C. P. & St. L. Ry. Co. v. Lewis, 145 Ill. 67.

Of railroad company duty toward passenger on freight train.

C. & A. R. R. Co. v. Arnol, 144 Ill. 261.

Care required by—of passengers—as to trespassers.

C., B. & Q. Ry. Co. v. Mehlsack, 131 Ill. 61.

Duty of—as to dangers not ordinarily incident to travel—train attacked by mob—liability shown.

C. & A. R. R. Co. v. Pillsbury, 123 Ill. 11.

Care required by—of passenger riding in place of danger, on foot-board of engine.

L. S. & M. S. Ry. Co. v. Brown, 123 Ill. 163.

Duty to passengers on “through” tickets.

Pennsylvania Co. v. Connell, 112 Ill. 295.

Slightest negligence of—renders carrier liable for injury to passenger.

C. C. Ry. Co. v. Shaw, 220 Ill. 532.

#### **b. Omnibus Company.**

Care required by omnibus company carrying passengers through streets.

Parmalee Co. v. Wheelock, 224 Ill. 194.

#### **c. Owners of Vessels.**

Owners of wharf boats are not liable as common carriers of passengers.

Grand Tower M. & T. Co. v. Hawkins, 72 Ill. 386.

Owner of merchant vessels not—reasonable care required of persons on board by permission.

Atkins v. Lackawanna T. Co., 182 Ill. 237.

#### **d. Street Railway Companies.**

(See also STREET RAILWAY ACCIDENTS.)

Care required of—rule—street railway.

C. C. Ry. Co. v. Smith, 226 Ill. 178.

N. C. St. Ry. Co. v. Polkey, 203 Ill. 225.

C. C. Ry. Co. v. Shreve, 226 Ill. 530.

Duty to passengers alighting.

W. C. St. Ry. Co. v. McCafferty, 220 Ill. 476.

Of care required by street car company.

N. C. St. Ry. Co. v. Polkey, 203 Ill. 225.

W. C. St. Ry. Co. v. Johnson, 180 Ill. 285.

Care required by street car company at crossing and in looking out for children—rule.

C. C. Ry. Co. v. Tuohy, 196 Ill. 410.

Street car company—care required at crossings.

C. C. Ry. Co. v. Jennings, 157 Ill. 274.

### **e. Elevator Operators.**

(See also ELEVATOR ACCIDENTS.)

Elevator operators are—highest degree of care required by—rule.

Chicago Exchange Bldg. Co. v. Nelson, 197 Ill. 334.

Springer v. Ford, 189 Ill. 430.

Elevator operator held to be—care required.

Hartford Deposit Co. v. Sullatt, 172 Ill. 222.

### **f. Passengers—Who Are.**

(See also PASSENGERS.)

Passenger—who is—one boarding car.

C. U. T. Co. v. O'Brien, Jr., 219 Ill. 303.

Riding on a pass—liability.

I. C. R. R. Co. v. Leiner, 202 Ill. 624.

Riding on round trip ticket—rights under.

C. & A. R. R. Co. v. Walker, 217 Ill. 605.

Passenger—after leaving car—when—rules.

C. U. T. Co. v. Rosenthal, 217 Ill. 458.

W. C. St. Ry. Co. v. Buckley, 200 Ill. 260.

Passenger—who is not.

C. T. T. R. R. Co. v. Schiavone, 216 Ill. 275.

Evidence that transfer was given—sufficient.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Passenger—who is—what evidence sufficient.

Lake St. "L" Ry. Co. v. Burgess, 200 Ill. 628.

**g. As to Trespassers.**(See also **TRESPASSERS.**)**Stock shipper not a trespasser.****E. J. & E. Ry. Co. v. Thomas, 215 Ill. 158.****Conductor forcing trespasser to jump—duty toward trespasser on cars.****C. C. Ry. Co. v. Creech, 207 Ill. 400.****Trespasser—who is not.****C. T. T. R. R. Co. v. Gruss, 200 Ill. 195.****Trespasser—evidence held to show.****I. C. R. R. Co. v. Hopkins, 200 Ill. 122.****Duty of carrier to trespasser.****I. C. R. R. Co. v. Hopkins, 200 Ill. 122.****Duty of—to licensee on right of way.****I. C. R. R. Co. v. Hopkins, 200 Ill. 122.****h. As to Right of Way.****As to who has right of way—wagon or car.****C. C. Ry. Co. v. Lamon, 212 Ill. 477.****Carrier has right of way on streets over wagon.****Knickerbocker Ice Co. v. Benedix, 206 Ill. 362.****i. Negligence By.**(See also **NEGLIGENCE.**)**Running at high speed in city—negligence.****C. & E. I. R. R. Co. v. Crose, 214 Ill. 602.****Liability for collision—passenger injured.****C. C. Ry. Co. v. Lamon, 212 Ill. 477.****Losing control of electric car—negligence.****C. C. Ry. Co. v. Barker, 209 Ill. 321.**

Evidence of wilful and wanton negligence by  
Pressed Steel Co. v. Herath, Admr., 207 Ill. 576.

Allowing passenger to ride on foot-board.  
N. C. St. Ry. Co. v. Polkey, Admr., 203 Ill. 225.

Gross negligence of—what is.  
I. C. R. R. Co. v. Eicher, 202 Ill. 556.

Failing to stop on signal—when not negligence.  
S. C. C. Ry. Co. v. Dufresne, 200 Ill. 456.

#### **j. Release—Force of.**

(See also RELEASE OF LIABILITY.)

Release of liability—force of.  
C. & A. R. R. Co. v. Jennings, 217 Ill. 494.

Contract releasing from damages except from gross negligence  
held void—stock shipper.  
I. C. R. R. Co. v. Anderson, 184 Ill. 295.

#### **k. Miscellaneous.**

Ejecting passenger from street car.  
Tri-City Ry. Co. v. Gould, 217 Ill. 317.

Conductor's authority to invite passenger to ride on engine—  
held he has none.  
I. C. R. R. Co. v. Jennings, 217 Ill. 140.

Permitting passengers to ride on platform.  
C. & W. I. Ry. Co. v. Newell, 212 Ill. 332.

Speed ordinance—carriers subject to.  
U. S. Brewing Co. v. Stoltenberg, 211 Ill. 531.

Of ownership of cars—name on is prima facie evidence.  
E. St. L. Connecting Ry. Co. v. Altgen, 210 Ill. 213.

What must prove where passengers was injured—burden on.  
C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Rule of railroad company prohibited shipper to ride with horses  
—held waived.

C., B. & Q. R. R. Co. v. Dickson, 143 Ill. 368.

Not allowed to adopt rules preventing travel.

C., B. & Q. Ry. Co. v. Bryan, 90 Ill. 126.

Held by evidence of slightest negligence.

C. C. Ry. Co. v. Shaw, 220 Ill. 532.

Instruction as to care for passengers required.

C. C. Ry. Co. v. Schmidt, 217 Ill. 396.

N. C. St. Ry. Co. v. Polkey, 203 Ill. 225.

**CAVE-IN, CLAY BANK, DITCH, SLAG PILE, ETC.**

**Clay bank caved in** on employee of a subcontractor doing grading for railroad company. The chief question was as to the liability of the railroad company as owner for injury to servant of subcontractor. Held no liability as the subcontractor was not exercising any charter power of the company. Verdict for defendant directed. Affirmed.

Boyd, Admr., v. C. & N. W. Ry. Co., 217 Ill. 332.

**Ditch caved in on workman.** Had no knowledge of the ditch. The foreman knew it was cracked and ordered plaintiff to work without warning him. Judgment for plaintiff. Affirmed.

Barnett and Record Co. v. Schlapka, 208 Ill. 426.

**Slag pile caved in on workman** causing his death. Was ordered to shovel slag from a slag pile 15 feet high, into cars. Was inexperienced and was not warned of the danger of a cave in. Judgment \$3,000. Affirmed.

Anthony Ittner Brick Co. v. Ashby, Admr., 198 Ill. 562.

**Gravel pit—side of caved in on employee.** Plaintiff had worked but three days. Mud and clay had formed at the bottom of the pit. While plaintiff was shoveling the mud into wheel barrow as ordered, near the side bank of the pit, gravel and dirt slipped down upon him. He had had experience in other gravel pits. Looked the bank over before going to work and judged it safe. No inspection by defendant. Judgment \$4,167. Affirmed.

Western Stone Co. v. Muscial, 196 Ill. 382.

**Clay bank caved in on workman** whom the foreman told to go in and take out the clay after the workman had complained that it was dangerous and called foreman's attention to the dan-



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ger. The foreman assured him it was all right. A few minutes after he started working the bank fell. Judgment \$6,000. Affirmed.

**Anderson Pressed Brick Co. v. Sobkowiak, 148 Ill. 573.**

**Bank of earth caved in on workman, causing his death.** A gang of men were doing excavating for a railroad. Deceased was experienced in that class of work. The superintendent had told the men not to undermine as they had been doing. Deceased ignored this direction. Verdict directed for defendant. Affirmed.

**Simmons v. Chicago & Tomah R. R. Co., 110 Ill. 340.**

**COLLISIONS.**

**STREET CARS AND TRAINS.  
STREET CAR WITH STREET CAR.  
TRAIN WITH TRAIN—HEAD ON.  
TRAIN WITH TRAIN—REAR END.  
AT RAILROAD CROSSINGS.  
MISCELLANEOUS.**

**a. Street Cars and Trains.**

(See also **STREET RAILWAY ACCIDENTS.**)

**Collision—street car and train.** Passenger on street car injured. No flagman. 9 P. M. Conductor of street car signaled to come ahead. Gates not operated after 7 P. M. Ordinance requiring gates day and night. Judgment \$1,250. Affirmed.

*C. & A. Ry. Co. v. Averill*, 224 Ill. 516.

**Collision of street car and railroad train.** Gates up. Conductor went ahead and ordered car to "come on." Car struck by passenger train. Passenger on car injured. Ear cut off; one arm useless, etc. Judgment \$15,000. Affirmed.

*C. C. Ry. Co. v. Smith*, 226 Ill. 178.

**Collision—street car and locomotive.** Collision of defendant's engine with street car crossing track. Plaintiff was passenger on street car. Injury to spine. Judgment \$1,358.40. Affirmed.

*C. & E. I. R. R. Co. v. Stewart*, 203 Ill. 223 (6-'03).

**Collision—street car and train—ran through gates.** Street car ran through railroad gates upon track and was struck by train going at high speed, which was held proximate cause of action. Judgment for plaintiff. Affirmed.

*C. & E. I. R. R. Co. v. Hines*, 183 Ill. 482 (2-'00).

**Collision—street car and locomotive.** Passenger on car injured. Railroad company charged with negligence in failing to give warning by ringing bell or blowing whistle; and street car company in that conductor did not go ahead to look out for train. Suit against both. Judgment \$12,000. Affirmed (47 Ill. App. 610 affirmed).

W. C. St. Ry. Co. v. Martin, 154 Ill. 523.

#### **b. Street Car With Street Car.**

**Collision of street cars at crossing.** Passenger injured. Arm broken; eyes affected; hearing permanently impaired. High speed. Judgment \$1,875. Affirmed.

C. C. Ry. Co. v. Pural, 224 Ill. 686.

**Collision—street car and omnibus.** Passenger in omnibus thrown to floor and injured. Action against omnibus company and street car company jointly. Nose broken. Judgment \$3,500. Affirmed.

Parmalee Co. v. Wheelock, 224 Ill. 194.

**Collision in street car barn.** Employee in car-barn whose duty it was to break up trains, was injured by collision between car he was setting back and an incoming cable train. No warning. Judgment \$1,500. Affirmed.

N. C. St. Ry. Co. v. Aufman, 221 Ill. 614 (6-'06).

**Cable train collided with cable train ahead—conductor injured.** Conductor on defendant's line injured. The gripman of following train negligently ran into his car, while plaintiff was under car repairing defect. Judgment \$15,000. Affirmed in appellate. Reversed and remanded in supreme court on ground that gripman and conductor were fellow-servants. Jury should have been directed. (Same case, 182 Ill. 359.)

C. C. Ry. Co. v. Leach, 208 Ill. 198 (2-'04).

**Collision of street cars at crossing.** Horse car and cable train at State and Adams streets, Chicago. Negligence of the

**gripman on the cable train—high speed.** Conductor on the horse car severely injured. Judgment \$15,000. Affirmed.

C. C. Ry. Co. v. Taylor, 170 Ill. 49 (68 Ill. App. 613 af'd).

**Collision of street cars.** Pedestrian injured—car fell on him. Judgment \$2,000. Affirmed.

W. C. St. Ry. Co. v. Feldstein, 169 Ill. 139 (11-'97).

**Collision—carette and street car.** Passenger of carette injured. Judgment \$1,100. Affirmed.

W. C. St. Ry. Co. v. Piper, 165 Ill. 325.

**Collision of street cars in Washington street tunnel.** Passenger injured. Judgment \$12,500. Affirmed.

W. C. St. Ry. Co. v. Bode, 150 Ill. 396.

**Collision.** Horse-car of West Chicago Street Railway Company and grip car of Chicago City Railway company at Randolph street and Wabash avenue, Chicago. Driver of horse-car killed. Judgment for plaintiff. Affirmed.

C. C. Ry. Co. v. McLaughlin, 146 Ill. 353.

**Collision—grip-car and horse-car.** Passenger on horse-car injured. Negligence of driver of grip-car. Failure to watch ahead. Judgment for plaintiff. Affirmed.

C. C. Ry. Co. v. Van Vleck, 143 Ill. 480.

**Collision of street cars in La Salle street tunnel.** Passenger injured. *Res ipsa loquitur*. Judgment for \$1,800. Affirmed.

N. C. St. Ry. Co. v. Cotton, 140 Ill. 487.

### c. Train With Train—Head On.

**Collision—Excursion and freight trains.** Collision of excursion and freight train. Passenger on excursion train injured. Judgment \$2,500. Affirmed.

C. & A. R. R. Co. v. Jennings, 217 Ill. 494 (10-05).

**Collision—passenger injured.** Passenger injured in collision. Rendered hopeless invalid. Instruction. Damages for medical attendance. Judgment \$21,000. Affirmed.

C. & E. R. Co. v. Clenninger, 178 Ill. 536 (2-'99).

**Head on collision.** Negligence of conductor—engineer jumped—left leg amputated. Judgment \$6,000—reversed by appellate (65 Ill. App. affirmed).

Meyer v. Ill. Cent. R. R. Co., 177 Ill. 591 (2-'99).

**Collision—train with train.** Deceased had climbed onto front platform of baggage car. Had not paid fare. Conductor saw him there. Judgment \$3,000. Reversed on ground deceased was not a passenger.

I. C. R. R. Co. v. O'Keefe, 168 Ill. 115.

**Railroad collision—freight train and special.** Engineer of special injured. Bladder and stomach trouble caused. One thousand dollars tendered into court as payment of damages. Judgment \$5,000. Affirmed.

I. C. R. R. Co. v. Cole, 165 Ill. 334.

**Collision of railroad train.** Workman riding to work injured. Collision was due to carelessness of engineer of the work train. Judgment \$10,000. Reversed for bad instruction on fellow-servantship.

M. & O. R. R. Co. v. Godfrey, 155 Ill. 78.

**Railroad collision.** Plaintiff had free pass and was riding on the platform of the baggage car without the knowledge of the conductor. His pass waived liability for injury. Was killed in the collision. Judgment \$2,250. Reversed for failure to embody all the evidence in the bill of exceptions and for instruction (49 Ill. App. 320).

I. C. R. R. Co. v. O'Keefe, 154 Ill. 508 (1-'95).

**Railroad collision—work train and extra.** Caused by engineer misreading orders to look out for "extra." He read

“north” for “south.” Negligence of conductor contributed to accident. Workman killed while riding on flat car. Judgment \$2,500. Affirmed.

*M. & O. R. R. Co. v. Massey*, 152 Ill. 144.

**Railroad collision—wrecking train and freight train.** Member of wrecking crew killed. He was riding in the engine. The rules of the company required him to ride in the wrecking car. The crew foreman had orders to keep out of the way of the freight train. Verdict directed for defendant. Affirmed.

*Abend v. T. H. & I. R. R. Co.*, 111 Ill. 202.

**Collision of trains at stock yards.** Cattle shipper riding on the tender of the engine by invitation. Killed. Judgment \$3,500. Reversed because instruction omitting element of due care by deceased.

*W. St. L. & P. Ry. Co. v. Shacklet*, 105 Ill. 364.

**Head on collision of trains.** Engineer injured by negligence of conductor of train belonging to another road running over defendant's road under lease of its tracks. No negligence of defendant's servants. Judgment for plaintiff. Reversed in appellate court on ground that plaintiff assumed the risk. Affirmed.

*Clark v. C., B. & Q. R. R. Co.*, 92 Ill. 43.

#### **d. Train With Train—Rear End.**

**Collision of trains at railroad crossing.** Tracks of defendant company and those of another company ran parallel 75 feet apart. Both were crossed at right angles by tracks of Santa Fe company. Switch engine on Santa Fe collided with passenger train on C. & A. Defendant's engineer went ahead when semaphore showed danger signal. Fireman on Santa Fe switch engine killed. Judgment for plaintiff. Affirmed.

*C. & A. R. R. Co. v. Nipond, Admr.*, 212 Ill. 199 (10-'04).

**Rear end collision.** Deceased was riding in caboose on a pass, going home after his day's work. Was engineer for defendant. Missed passenger train. Judgment \$5,000. Affirmed.

I. C. R. R. Co. v. Leiner, Admr., 202 Ill. 624 (4-'03).

**Rear end collision—conductor injured—under car repairing.** Conductor for defendant got underneath his car to tighten a chain. While he was there another train from behind ran into his car throwing it forward injuring plaintiff. Judgment \$16,500—reversed and remanded for overruling demurrer to statute of limitations. (See 208 Ill. 198.)

C. C. Ry. Co. v. Leach, 182 Ill. 359 (10-'99).

**Rear end collision on railroad—boy riding in caboose injured.** The plaintiff was riding in the caboose of a freight train and had paid no fare nor offered to pay any. Was riding with conductor's consent. He had orders to receive no passengers in the caboose. Judgment \$12,500. Reversed on the ground that the conductor exceeded his authority and that plaintiff was not a passenger.

C., C., C. & St. L. Ry. Co. v. Best, 169 Ill. 301 (68 Ill. App. 532 reversed).

**Rear end railroad collision—passenger injured.** Plaintiff was painter making \$3,000 per year. Judgment \$15,000. Affirmed.

C. & E. R. R. Co. v. Meech, 163 Ill. 305.

**Rear end collision.** Ran in on side track. Fireman killed. Judgment \$3,000. Reversed by appellate court without remanding. Affirmed.

Leeper v. T. H. & I. R. R. Co., 162 Ill. 215.

**Railroad collision.** Train backing in on side track to make main track clear for passenger train, collided with train on side track which had been ordered to move out to make way. Conductor standing on platform of caboose injured. Judgment \$4,000. Affirmed.

St. L. A. & T. H. Ry. Co. v. Barrett, 152 Ill. 168.

**Rear end collision.** Engineer killed. Rule of road was to approach all stations slowly. Deceased ignored this rule and ran into a train standing at station. Judgment for plaintiff. Reversed but not remanded, on ground contributory negligence shown.

Neer, Admx., v. I. C. R. R. Co., 151 Ill. 141.

**Collision—suburban train struck through train.** Conductor of suburban injured. Judgment for plaintiff. Affirmed.

C. & E. R. R. Co. v. Holland, 122 Ill. 461.

**Collision—fireman injured—open switch.** Locomotive fireman injured in collision between passenger engine he was on and switch engine on side track—open switch. 7 p. m. and daylight. Held result of assumed risk and fellow servant. Judgment for plaintiff reversed in appellate court. Affirmed.

Swisher v. I. C. R. R. Co., 182 Ill. 533 (10-'99).

#### e. At Railroad Crossings.

(See RAILROADS, ACCIDENTS AT CROSSINGS.)

**Collision of railroad trains—Engineer killed.** No facts. Judgment for plaintiff. Reversed in the appellate court without remanding. Supreme court reversed appellate court for improper findings of facts.

Neer v. I. C. R. R. Co., 138 Ill. 30.

**Collision of railroad trains at railroad crossing** caused by negligence of semaphore operator. Engineer killed. Judgment for plaintiff. Affirmed.

C. & N. W. Ry. Co. v. Snyder, Admx., 128 Ill. 655.

**Collision at railroad crossing.** Two trains owing to confusion of the semaphore signals, or failure to obey said signals. Conductor killed. Judgment \$5,000. Reversed because of erroneous general instruction for plaintiff that omitted the element of fellow servanthship, and for refusal of instruction on contributory negligence.

C. & N. W. Ry. Co. v. Snyder, 117 Ill. 378.



**f. Miscellaneous.**

**Wagon ran into bicycle—turned to left.** Plaintiff struck by a wagon of defendant while riding bicycle on public street. Wagon turned to the left, unexpectedly, instead of to the right. Judgment \$3,500. Affirmed.

*Blakeslee Express & Van Co. v. Ford*, 215 Ill. 230.

**Wagon ran into wagon at street crossing.** Driver of Fair delivery wagon, ran into wagon driven by plaintiff at intersection of streets, throwing him out. Judgment \$1,500. Affirmed.

*The Fair v. Hoffman*, 209 Ill. 330 (4-'04).

**Wagon ran into wagon.** Collision between beer wagon and plaintiff's wagon. Judgment \$4,000. Affirmed.

*U. S. Brewing Co. v. R. Ruddy*, 203 Ill. 306 (6-'03).

**Collision of two hand cars.** Both run by employes of defendant. The gangs did not work together, but occasionally met on the road. Plaintiff thrown off car. Judgment \$3,500. Affirmed.

*C. & A. R. R. Co. v. O'Brien*, 155 Ill. 630.

**Collision of buggy and wagon at intersection of street.** Negligence of the driver of the wagon. Judgment \$2,500. Affirmed.

*Christian v. Irwin*, 125 Ill. 619.

**Collision between hook and ladder wagon of fire department and wagon.** Negligence of driver of fire department. Demurrer to declaration sustained. Affirmed.

*Wilcox v. City of Chicago*, 107 Ill. 334.

**Collision—street car and hayrack.** Open car. Passenger sitting with back turned; struck and injured. Conflict as to

whether wagon backed into car unexpectedly. Judgment \$8,000. Reversed and remanded for refusal of instruction on burden of proof to show defendant's negligence.

C. U. T. Co. v. Mee, 218 Ill. 9.

(See also STREET RAILWAY ACCIDENTS.)

**Car left hanging over main line—switch open—collision.** Member of switch-crew injured. Crew was bringing cars to freight house. Another crew of defendant, a different company, switched in several cars, leaving car extending over main line and switch open, contrary to custom. Plaintiff's crew ran into switch and against cars left there. Plaintiff's leg broken and finger cut. Judgment \$10,000. Affirmed.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9 (10-'01).

**Car on side track—collision—express agent injured.** Express messenger injured by express car striking rear end of freight train on side track. No evidence of willful negligence. Rights of express agents discussed. Not passengers. Contract between railroad company and express company exempting railroad company from liability—held good. Judgment directed for defendant. Affirmed.

Blank, Jr., v. I. C. R. R. Co., 182 Ill. 332 (10-'99).

**Collision in Indiana—action begun in Illinois.** Foreman on locomotive killed in a collision. Accident in Indiana—action brought in Illinois. Indiana statute controls—discussion of law—conflict of. Judgment \$5,000. Affirmed.

C. & E. I. Ry. Co. v. Rouse, 178 Ill. 132 (2-'99).

**Railroad collision.** Brakeman killed. Judgment \$3,000 Affirmed.

St. L. A. & T. H. R. R. Co. v. Bauer, 156 Ill. 106.

**Collision—extra with engine standing on track** which had beer left there in charge of helper. On hearing the extra whistle

deceased had gone to engine to get it off the track. Was killed in the collision. Extra running down grade thirty miles an hour. Curve prevented view of approaching train. Judgment \$5,000. Affirmed.

L. E. & W. R. R. Co. v. Middleton, 142 Ill. 550.

**Collision of engines at railroad crossing.** Switchman of another railroad company was riding in engine by order of his foreman. At railroad crossing an engine of defendant, whose tracks crossed plaintiff's employer's tracks, collided with engine in which plaintiff rode. Judgment \$15,000—remitted \$4,000 Affirmed.

E. St. L. Connecting Ry. Co. v. Altgen, 210 Ill. 213 (6-'04).

**Switchman killed in collision in yards.** Helper in one of two switching crews killed. Was crushed between car off track and one standing on track, while trying to make a coupling. Negligence of foreman of crew. Facts complicated. Failure to warn of danger. Judgment \$5,000. Affirmed.

C. & E. I. R. R. Co. v. Driscoll, Admx., 207 Ill. 9 (12-'03).

**Collision—train with heavy stone on hoist near track.** Passenger injured in collision of train with a heavy stone which was being raised near the track, and was left suspended too near the track as the train came by. Plaintiff knocked down in car. Suit against railroad company and contractors. Joint judgment \$3,000. Affirmed.

C. & A. R. R. Co. et al. v. Murphy, 198 Ill. 462 (10-'02).

**Collision at crossing—engineer injured.** Plaintiff was locomotive engineer employed by defendant to run switch engine in yards. Another engine without a headlight ran into his engine at crossing. Plaintiff had stopped and whistled for crossing. About 5:30 and getting dark. Judgment \$4,000. Reversed and remanded. What is not negligence in running over railroad crossing.

St. Louis National Stock Yards v. Godfrey, 198 Ill. 219 (10-'02).

**Runaway car collided with locomotive.** Switch tender employed by Fort Wayne Railroad company. Defendant used the Fort Wayne yards. Train crew employed by defendant, allowed a car to run, unattended, down an incline. It struck a locomotive about which deceased was working. He was caught between car and locomotive and killed. Custom was to have some one on car to control it, when "kicked" back.

*P., C., C. & St. L. Ry. Co. v. Bovard*, Admr., 223 Ill. 176 (10-'06).

**Approaching train ran into ditched train.** Defective journal ditched one train, another train on which plaintiff was fireman ran into the ditched train. Oncoming train not duly warned of danger. Judgment \$8,000. Reversed and remanded on ground statute of limitations barred amended count on which recovery was had.

*The Wabash R. R. Co. v. Bhymer*, 214 Ill. 579 (4-'05).

**Collision between engine and car on side track—too near main track.** Stockman left loaded car projecting over main track. Station agent notified dispatcher by telegraph. Dispatcher notified conductor of oncoming train. Conductor failed to notify engineer or fireman. Fireman killed in the collision resulting. Judgment for the defendant directed. Reversed and remanded—master cannot delegate duty.

*Rogers, Admx. v. C., C., C. & St. L. Ry. Co.*, 211 Ill. 126 (10-'04).

**Collision of railroad trains.** Conductor on one of the trains killed, action by next of kin.

*C., B. & Q. R. R. Co. v. McLallen*, 84 Ill. 109.

**Railroad collision.** Passenger riding without a ticket or payment of fare—killed—riding by arrangement with conductor. Fraud on company. Judgment \$3,100. Reversed, no cause of action. Plaintiff riding by fraud.

*G. W. & W. Ry. Co. v. Brooks*, 81 Ill. 245.

**Collision of railroad engines.** Brakeman injured—no bones broken—disabled nine months. Judgment \$5,000. Reversed because of excessive damages.

C., R. I. & P. Ry. Co. v. McKittrick, 78 Ill. 619.

**Collision between hand car and train.** Train came suddenly upon hand car around curve, could not be seen until close. High speed—no bell—no whistle. Judgment \$2,000. Affirmed.

T. W. & W. Ry. Co. v. O'Connor, Admx., 77 Ill. 391.

**Collision of gravel and passenger trains.** Shoveler riding on gravel train thrown to ground and injured. Judgment \$250. Reversed because of instruction and special finding, inconsistent with general verdict and because shoveler and engineer held to be fellow servants.

St. L. & S. E. Ry. Co. v. Britz, 72 Ill. 256.

**Collision—vehicle with vehicle.** Grain wagon ran into carriage going same direction. Judgment \$250. Affirmed.

Coursen v. Ely, 37 Ill. 338.

**CONDUCT OF JUDGE OR ATTORNEY.**

OF JUDGE PRESIDING.  
OF ATTORNEY.

**a. Of Judge Presiding—Effect.**

Of judge—when excused by conduct of counsel.

C. C. Ry. Co. v. Shaw, 220 Ill. 532.

Of judge—is not a part of the record.

Hanchett v. Haas, 219 Ill. 546.

Of judge—must be objected to and exception saved.

C. C. Ry. Co. v. Bundy, 210 Ill. 39.

Of judge—in limiting number of instructions—disapproved.

C. C. Ry. Co. v. O'Donnell, Admr., 208 Ill. 267.

Of judge—leaving court room during the trial—disapproved.

Wells v. O'Hare, Admr., 209 Ill. 627.

C. C. Ry. Co. v. Creech, 207 Ill. 400.

Of judge—objection to must be duty saved.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Of judge—sleeping on bench during trial—not reversible where shown he missed nothing material.

C. C. Ry. Co. v. Anderson, 193 Ill. 9.

Of judge—absence from court room must prejudice.

C. C. Ry. Co. v. Anderson, 193 Ill. 9.

Of judge in expressing opinion and calling attention to evidence held reversible.

I. C. R. R. Co. v. Sonders, 178 Ill. 585.

Of court—remarks of—when not reversible.

C. C. Ry. Co. v. McLaughlin, 146 Ill. 353.

Of court—opinion as to value of medical text books—not reversible, but improper.

C. & E. R. R. Co. v. Holland, 122 Ill. 461.

Of judge—what are not expressions of opinion by.

Pennsylvania Co. v. Conlan, 101 Ill. 93.

Of judge—expression of opinion—how cured.

Hughes v. Richter, 161 Ill. 409.

Of judge—stating what facts admitted by counsel—proper.

Hinckley v. Horazdowsky, 133 Ill. 359.

### **b. Of Attorney—Effect—How Cured.**

When will not reverse judgment.

C. C. Ry. Co. v. Foster, 226 Ill. 288.

C. & E. I. R. R. Co. v. Zapp, 209 Ill. 339.

Misconduct cured by ruling of judge.

C. C. Ry. Co. v. McDonough, 221 Ill. 69.

C. Y. T. Co. v. Yarns, 221 Ill. 641.

Springfield Boiler Mfg Co. v. Parks, 222 Ill. 355.

Statements by counsel as to his theory of case do not change the pleadings.

C. C. Ry. Co. v. Shaw, 220 Ill. 532.

Of counsel—when sustaining objection to improper conduct, will not cure.

C. U. T. Co. v. Lauth, 216 Ill. 176.

Disapproved—attacking physician—when.

C. C. Ry. Co. v. Bennett, 214 Ill. 26.

Stating to jury that no instruction will be asked for plaintiff, but that counsel will state the law—held proper to make first statement but not the second.

I., I. & I. R. R. Co. v. Otstot, 212 Ill. 429.

Remarks in argument—held bad.

Wabash Ry. Co. v. Billings, 212 Ill. 37.

Of attorney—improper remarks in argument will reverse.  
*Wabash Ry. Co. v. Billings*, 212 Ill. 37.

Questioning ruling of court in presence of jury—bad.  
*C. U. T. Co. v. Lawrence*, 211 Ill. 373.

Comment on witnesses—proper—how far.  
*C. C. Ry. Co. v. Creech*, 207 Ill. 400.

Of counsel—objection must be made to—ruling had and exception saved.

*C. C. Ry. Co. v. Gemmill*, 209 Ill. 638.

Of counsel—attacking corporations—bad.  
*Quincy Gas & E. Co. v. Bauman*, 203 Ill. 295.

Referring to other cases in argument—bad.  
*Quincy Gas & E. Co. v. Bauman*, 203 Ill. 295.

Held bad but not reversible.  
*C. C. Ry. Co. v. Cooney*, 196 Ill. 466.

Of attorney. Are cured if objection to is sustained by the court.

*C. & A. R. R. Co. v. McDonnell*, 194 Ill. 82.

Of attorney—must prejudice to reverse.  
*South Chicago C. Ry. Co. v. Purvis*, 193 Ill. 454.  
*Maxwell v. Durkin*, 185 Ill. 546.

Of attorney—abuse of opposing counsel—bad but will not reverse where no objection to.

*City of Salem v. Webster*, 192 Ill. 369.

Discussing damages not claimed in opening statement—discretion of court.

*P., C., & St. L. Ry. Co. v. Bovard, Admr.*, 223 Ill. 176.

Remittitur in appellate court will cure—when.

*W. C. St. Ry. Co. v. Musa*, 180 Ill. 130.

Of counsel—in offering to prove (in presence of jury) cured by instruction to disregard.

*I. C. R. R. Co. v. Treat*, 179 Ill. 576.



Of counsel—must be raised by objection and exception saved to ruling, to review.

C. & E. R. R. Co. v. Cleminger, 178 Ill. 536.

Of counsel—when cured.

W. C. St. Ry. Co. v. Waniatta, 169 Ill. 17.

Of counsel—remarks by—held bad but not reversible.

W. C. St. Ry. Co. v. McNulty, 166 Ill. 203.

Of counsel—interrupting opponent in argument—proper to secure ruling on remarks of.

W. C. St. Ry. Co. v. Sullivan, 165 Ill. 302.

Of counsel—arguing for remote damages—improper.

I. C. R. R. Co. v. Cole, 165 Ill. 334.

Of attorney—remarks of—when not reversible.

N Y. C. & St. L. R. R. Co. v. Luebeck, 157 Ill. 595.

O. & M. Ry. Co. v. Wangelin, 152 Ill. 138.

Imputing perjury to witness—proper.

E. St. L. C. Ry. Co. v. O'Hara, 150 Ill. 580.

Of attorney in argument, may reverse.

Monmouth M. & M. Co. v. Erling, 148 Ill. 521.

City of Chicago v. Leseth, 142 Ill. 642.

Of attorney—when they will not reverse.

Joliet Street Ry. Co. v. Call, 143 Ill. 177.

C. C. Ry. Co. v. Van Vleck, 143 Ill. 480.

L. E. & W. Ry. Co. v. Middleton, 142 Ill. 550.

Of counsel in argument—bad but not reversible.

Marder, Luse & Co. v. Leary, 137 Ill. 319.

Of attorney—must do harm to reverse.

C. & A. R. R. Co. v. Pillsbury, 123 Ill. 11.

Of attorney—referring to former trial—bad but not harmful here.

C. & A. R. R. Co. v. Dillon, 123 Ill. 571.

Of attorney—disapproved but not reversible.

C. & A. R. R. Co. v. Johnson, 116 Ill. 206.

**CONTRIBUTORY NEGLIGENCE.**

- ALIGHTING OR BOARDING MOVING CAR, p. 71.
- RIDING IN UNUSUAL PLACE, p. 73.
- OF PARENT FOR CHILD, p. 74.
- GOING OVER DEFECTIVE SIDEWALK, p. 74.
- TURNING ACROSS STREET CAR TRACK, p. 75.
- AT RAILROAD CROSSINGS, p. 76.
- BY CHILDREN OR MINORS, p. 77.
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- SLIGHT NEGLIGENCE AS—WHEN, p. 80.
- IN SUDDEN DANGER—TO SAVE LIFE OR PROPERTY, p. 80.
- IN HANDLING ELECTRICITY, p. 81.
- ABOUT ELEVATORS, p. 81.
- IN "LOOKING AND LISTENING" AT CROSSING, p. 81.
- PRACTICE AS TO, p. 82.
- UNDER ASSURANCE OF SAFETY, p. 82.
- WORKING UNDER ORDERS, p. 82.
- WHERE PROMISE TO REPAIR, p. 83.
- MISCELLANEOUS RULES AND FINDINGS, p. 83.
- HELD NOT SHOWN, p. 85.
- HELD SHOWN, p. 87.
- WHEN QUESTION OF FACT—WHEN OF LAW, p. 88.
- INSTRUCTIONS AS TO, p. 89.
- WHERE STATUTE VIOLATED, p. 90.

**Contributory negligence consists in failing to exercise ordinary care in such manner that reasonable minds would not differ in declaring that such failure materially contributed to the injury complained of, and proven by the evidence.**

**a. Alighting From or Boarding Moving Car or Train.**

**1. Alighting.**

- Shown—passenger alighting from train at station in night time  
Harvey v. C. & A. R. R. Co., 221 Ill. 242.
- In getting off moving train—shown.  
Hewes v. C. & E. I. R. R. Co., 217 Ill. 500.

In getting off car at conductor's suggestion.

B. & O. S. R. R. Co. v. Mullen, 217 Ill. 203.

In getting off car—not shown.

C. U. T. Co. v. Olsen, 211 Ill. 255.

C. U. T. Co. v. Hawthorn, 211 Ill. 367.

Jumping off moving car held to be contributory negligence.

C. & E. J. Ry. Co. v. Storment, 190 Ill. 43.

Getting off moving street car—not per se.

Springfield Ry. Co. v. Hoeffner, 175 Ill. 634.

Alighting from street car—not shown.

N. C. St. Ry. Co. v. Brown, 178 Ill. 187.

Not shown—passenger alighting from train.

Pennsylvania Co. v. McCaffrey, 173 Ill. 168.

Contributory negligence in jumping off a train while in motion shown.

Dougherty v. C., B. & Q. Ry. Co., 86 Ill. 467.

Alighting from moving street car—when not.

C. C. Ry. Co. v. Mumford, 97 Ill. 560.

Jumping off moving car held to be contributory negligence.

I. C. R. R. Co. v. Chambers, 71 Ill. 519.

## 2. Boarding.

In boarding moving car—not shown.

C. & A. R. R. Co. v. Flaherty, 202 Ill. 151.

C. U. T. Co. v. Lundahl, 215 Ill. 289.

Boarding moving car on advice of conductor—not.

C. & A. R. R. Co. v. Gore, 202 Ill. 188.

Boarding car at unusual place—not per se.

South Chicago C. Ry. Co. v. Dufresne, 200 Ill. 456.

Boarding moving street car—not per se.

N. C. St. Ry. Co. v. Kaspers, 186 Ill. 246.

N. C. St. Ry. Co. v. Wiswell, 168 Ill. 613.

Boarding moving car is not per se.

N. C. St. Ry. Co. v. Williams, 140 Ill. 275.

Getting on moving railroad car—shown—when question of law.

C. & N. W. Ry. Co. v. Scates, 90 Ill. 586.

### **b. Riding in Unusual Place.**

Riding on box in wagon—thrown out—not shown.

C., R. I. & P. Ry. Co. v. Steckman, 224 Ill. 500.

Riding on steps of street car is not per se.

C. C. T. Co. v. Schritter, 222 Ill. 364.

Going to platform of moving car—not.

Alton Ry., Gas & E. Co. v. Webb, 219 Ill. 563.

Riding on bumper of street car—not per se

C. C. Ry. Co. v. Schmidt, 217 Ill. 396.

Passenger riding in engine—held to be.

I. C. R. R. Co. v. Jennings, 217 Ill. 140.

Riding on platform—not per se.

Alton Light & T. Co. v. Oller, 217 Ill. 15.

Riding on platform of street car—not per se.

C. C. Ry. Co. v. McCaughna, 216 Ill. 202.

Riding on flat car—held shown—struck cattle guard.

C. T. T. Ry. Co. v. Schiavone, 216 Ill. 275.

Riding on foot-board of car—not per se.

C. C. Ry. Co. v. Creech, 207 Ill. 400.

Standing on lower step of moving car is not per se—fact for the jury.

L. S. & M. S. Ry. Co. v. Kelsey, 180 Ill. 530.

Riding on platform of a street car is not per se.

N. C. St. Ry. Co. v. Bauer, 179 Ill. 126.

Riding on platform of car in excursion train held not per se.

C. & A. R. R. Co. v. Dumser, 161 Ill. 191.

Of stock shipper in riding in car with horses—not shown.

C., B. & Q. Ry. Co. v. Dickson, 143 Ill. 368.

Riding on platform of excursion train—when not (51 Ill. 495; 114 Ill. 79 distinguished).

C. & A. R. R. Co. v. Fischer, 141 Ill. 615.

Riding on engine against rules—shown.

Abend v. T. H. & I. R. R. Co., 111 Ill. 202.

Passenger riding in the baggage car guilty of contributory negligence.

P. & I. R. Co. v. Lane, 83 Ill. 448.

Riding on platform of car—when contributory negligence.

R. R. I. & St. L. Ry. Co. v. Coultas, 67 Ill. 398.

### c. Of Parent for Child.

(See also NEGLIGENCE; EVIDENCE.)

Of parent—not shown—child injured.

True and True Co. v. Woda, Admx., 201 Ill. 315.

### d. Going Over Defective Sidewalk, etc., With Knowledge.

Contributory negligence held a question of fact for the jury.  
Wagon tipped over on uneven street.

City of Chicago v. Bork, 227 Ill. 60.

Defective sidewalk—defect known—not.

City of Mattoon v. Faller, 217 Ill. 273.

Driving over rough street with heavy load—for jury.

City of Aurora v. Scott, 185 Ill. 539.

In going over a sidewalk known to be defective is not per se—question of fact for jury.

City of Streator v. Chrisman, 182 Ill. 215.

Walking over sidewalk known to be defective is not per se.

Village of Cullom v. Justice, 161 Ill. 372.

Walking over a sidewalk known to be defective is not per se.

Village of Clayton v. Brooks, 150 Ill. 97.

City of Beardstown v. Smith, 150 Ill. 169.

City of Sandwich v. Dolan, 142 Ill. 432.

Crossing dangerous bridge—not per se.

St. Louis Bridge Co. v. Miller, 138 Ill. 465.

Walking over defective sidewalk—not per se.

City of Flora v. Nancy, 136 Ill. 45.

Engineer running over defective track—shown.

I. C. R. R. Co. v. Patterson, 93 Ill. 290.

Walking over known defective sidewalk—not shown.

City of Aurora v. Dale, 90 Ill. 46.

City of Aurora v. Hillman, 90 Ill. 61.

Hutchinson v. Collins, 90 Ill. 410.

Contributory negligence in passing over sidewalk known to be defective—shown.

Lovenguth v. City of Bloomington, 71 Ill. 238.

#### **e. Turning Across Street Car Track.**

Turning “across street car track” held not per se.

C. U. T. Co. v. Leach, 215 Ill. 184.

Turning onto track in front of car—when not.

Barnett and Record Co. v. Schlapka, 208 Ill. 426.

W. C. St. Ry. Co. v. Schulz, 217 Ill. 322.

N. C. St. Ry. Co. v. Irwin, 202 Ill. 345.

Driving wagon across street car track ahead of an approaching car—held not per se.

C. C. Ry. Co. v. Olla, Admx., 192 Ill. 514.

Driving wagon along on street car track is not.

N. C. St. Ry. Co. v. Zelger, 182 Ill. 9.

**f. At Railroad Crossing.**

(See RAILROAD ACCIDENTS, AT CROSSING.)

Crossing railroad tracks—when not.

C. U. T. Co. v. Jacobson, 217 Ill. 404.

Crossing railroad tracks—held not to be.

C. & E. I. R. R. Co. v. Schmitz, 211 Ill. 446.

Crossing track ahead of moving street car—held not per se.

C. C. Ry. Co. v. Sandusky, 198 Ill. 400.

In approaching railroad crossing—for jury.

C. & A. R. R. Co. v. Corson, Admr., 198 Ill. 98.

In crossing railroad tracks is a question for the jury.

C., B. & Q. R. R. Co. v. Pollock, 195 Ill. 156.

In passing through parts of a train at a crossing, cut in two to let public pass—held not shown—train suddenly backed.

C. & E. J. R. R. Co. v. Filler, 195 Ill. 9.

What is not where traveler is struck by train at railroad crossing.

C., C., C. & St. L. Ry. Co. v. Keenan, 190 Ill. 217.

C. & A. R. R. Co. v. Lewandowski, 190 Ill. 301.

Not shown where plaintiff thought he had time to cross street car track and was struck because of high speed of car.

Chicago General Ry. Co. v. Carwell, 189 Ill. 273.

In seeking to cross railroad tracks ahead of approaching train—not shown.

D. & O. S. Ry. Co. v. Keck, 185 Ill. 400.

By lady driving across railroad crossing—not shown.

I. C. R. R. Co. v. Griffin, 184 Ill. 9.

Crossing railroad tracks in front of approaching train not per se.

C. & A. R. R. Co. v. Smith, 180 Ill. 453.

Passing under railroad gates when down is not per se.

C. & W. I. Ry. Co. v. Ptacek, 171 Ill. 9.

In crossing dangerous tracks—not shown.

C., R. I. & P. Ry. Co. v. Clough, 134 Ill. 586.

In crossing railroad tracks—what may be.

C., M. & St. P. Ry. Co. v. Halsey, 133 Ill. 248.

In approaching railroad crossing—not shown.

L. S. & M. S. Ry. Co. v. Parker, 131 Ill. 557.

In failing to stop at railroad crossing—when shown.

C. & N. W. Ry. Co. v. Snyder, 117 Ill. 378.

Contributory negligence in crossing railroad track shown.

R. R. I. & St. L. R. R. Co. v. Byam, Admr., 80 Ill. 528.

Contributory negligence in crossing railroad tracks not shown.

St. L. V. & T. H. R. R. Co. v. Dunn, Admx., 78 Ill. 197.

Contributory negligence in crossing railroad track shown.

T. W. & W. Ry. Co. v. Jones, 76 Ill. 311.

Contributory negligence in crossing railroad track shown.

C., B. & Q. Ry. Co. v. Van Patten, 74 Ill. 91.

Contributory negligence held shown—where person crossing track fails to look in both directions before crossing (this rule is not good now).

I. C. R. R. Co. v. Goddard, Admx., 72 Ill. 567.

Contributory negligence in crossing railroad track shown.

C., R. I. & P. Ry. Co. v. Bell, 70 Ill. 102.

### **g. On the Part of Children and Minors.**

Experience and intelligence of child are elements in determining whether action is barred by.

L. E. & W. R. R. Co. v. Klinkrath, 227 Ill. 439.

Contributory negligence not shown as a matter of law—girl thirteen years old.

L. E. & W. R. R. Co. v. Klinkrath, 227 Ill. 439.



Not imputable to child under seven years old.

*Richardson v. Nelson*, 222 Ill. 254.

Of minor—age, intelligence, etc., to be considered—not shown here.

*Star Brewery Co. v. Houch*, 222 Ill. 348.

Of child—not a bar to action.

*True & True Co. v. Woda, Admx.*, 201 Ill. 315.

Child under seven years not chargeable with.

*I. C. R. R. Co. v. Jeringan*, 198 Ill. 297.

*C. C. Ry. Co. v. Tuohy*, 196 Ill. 410.

By child—not exclusively a question of age—intelligence and experience are elements to be considered.

*Ill. Iron & Metal Co. v. Weber*, 196 Ill. 526.

On the part of minors—rule as to—boy fifteen years old.

*Helman v. Kinnare*, 190 Ill. 157.

Boy catching on freight train held to be guilty of—no recovery.

*Borg v. C. R. I. & P. Co.*, 162 Ill. 348.

When child is incapable of—cases reviewed.

*C. C. Ry. Co. v. Wilcox*, 138 Ill. 370.

Not imputed to child—when.

*C. W. D. Ry. Co. v. Ryan*, 131 Ill. 474.

Not imputed to children—when.

*I. C. R. R. Co. v. Slater*, 129 Ill. 91.

Child seven years old not chargeable with.

*C. St. L. & P. Ry. Co. v. Welch*, 118 Ill. 572.

By child ten years old—rule as to.

*City of Chicago v. Keefe*, 114 Ill. 222.

Child four years old not capable of.

*Gavin v. City of Chicago*, 97 Ill. 66.

Contributory negligence by child. Rule in such case.

*R. R. I. & St. L. R. R. Co. v. Delaney*, 82 Ill. 198.

Rule as to looking and listening at railroad crossing does not apply to children.

*C. & A. R. R. Co. v. Becker*, 84 Ill. 483.

Contributory negligence by a boy thirteen years of age—what is.

*Sinclair v. Berndt*, 87 Ill. 174.

Rule of contributory negligence discussed—contributory negligence by children—fact for jury.

*C. & A. R. R. Co. v. Becker, Admr.*, 76 Ill. 25.

### **h. Injuries to Railroad Employees—Miscellaneous.**

Not shown where employe going for a drink of water at a place where defendant kept water for its employes, is struck by fast train after looking both ways.

*L. S. & M. S. Ry. Co. v. Enright*, 227 Ill. 403.

Crawling under living car of labor gang on railroad—when not.

*I. C. R. R. Co. v. Panebiango*, 227 Ill. 170.

Going under railroad car to make repairs—held to show contributory negligence under the facts.

*C. & A. R. R. Co. v. Pettit*, 209 Ill. 452.

Not shown where brakeman is knocked off car ladder by coal chute where he had no knowledge of its being too near the track.

*C. & A. R. R. Co. v. Stevens, Admx.*, 189 Ill. 226.

Walking between tracks to carry dinner to fireman in yards is not per se.

*E. St. L. C. Ry. Co. v. Reames*, 173 Ill. 582.

Brakeman hurt on unballasted track—shown.

*Pennsylvania Co. v. Hankey*, 93 Ill. 580.

Walking on right of way—shown as matter of law.

*Austin, Admx., v. C. R. I. & P. Ry. Co.*, 91 Ill. 35.

Brakeman hit by pole too near track—not shown.

C. & I. R. R. Co. v. Russell, 91 Ill. 299.

In coupling cars—shown.

T. W. & W. Ry. Co. v. Black, 88 Ill. 112.

Of car repairer in failing to place flag on car he is repairing—not shown.

Quick v. I. & St. L. Ry. Co., 130 Ill. 334.

Failure of laborer to jump from hand car before collision—held not contributory negligence.

T. W. & W. Ry. Co. v. O'Connor, Admx., 77 Ill. 391.

#### **i. Slight Negligence by Plaintiff—Force of.**

Slight negligence is not incompatible with due care.

C. & E. I. R. R. Co. v. Randolph, 199 Ill. 126.

Slight negligence may exist and not.

C. B. & Q. R. R. Co. v. Warner, 123 Ill. 38.

Slight negligence by plaintiff bars recovery.

W. St. L. & P. Ry. Co. v. Wallace, 110 Ill. 114 (67 Ill. 178 disapproved; 80 Ill. 88; 103 Ill. 512 approved).

Slight negligence may be.

C. B. & Q. Ry. Co. v. Avery, 109 Ill. 314.

#### **j. In Sudden Danger or to Save Life or Property.**

When acting under sudden peril—not.

C. U. T. Co. v. Newmiller, 215 Ill. 383.

In sudden danger—held not shown.

Dunham Towing W. Co. v. Dandelin, 143 Ill. 409.

Is not imputed to one injured while seeking to save life unless he brought the person into the position of danger.

W. C. St. Ry. Co. v. Liderman, 187 Ill. 463.

Incurring danger to save property—when not.

Pullman Palace Car Co. v. Laack, 143 Ill. 243.

**k. In Handling Electric Wires.**(See also **ELECTRICITY CASES.**)

Not shown where deceased came into contact with a live wire, not knowing it was live.

Village of Palestine v. Siller, Admr., 225 Ill. 630.

Failure of poleman to use safety strap—held to be.

Rowe, Admx. v. Taylorville Elec. Co., 213 Ill. 318.

Injured by electric wire—not shown.

Commonwealth Elec. Co. v. Melville, 210 Ill. 70.

**l. Elevators.**(See also **ELEVATOR CASES.**)

In falling into open elevator shaft: not shown.

Shoninger Co. v. Mann, 219 Ill. 242.

Attempting to enter elevator at wrong door—held to be.

Cullen v. Higgins, 216 Ill. 78.

Stepping out of elevator by mistake is not.

Chicago Exchange Bldg. Co. v. Nelson, 197 Ill. 334.

**m. Rule as to "Looking and Listening" at Crossing.**(See also **RAILROAD ACCIDENTS, AT CROSSINGS.**)

Failure to "look and listen"—not per se.

Toledo P. & W. Ry. Co. v. Hammett, 220 Ill. 9.

C. U. T. Co. v. O'Donnell, Admr., 211 Ill. 349.

Barnett & Record Co. v. Schlapka, 208 Ill. 426.

Section hand failed to "look out" for engine—not.

I. I. & I. R. R. Co. v. Ostel, 212 Ill. 429.

Failure to "look back" for car—held not.

C. C. Ry. Co. v. Barker, 209 Ill. 321.

Failure to look and listen at railroad crossing is not per se—fact for jury.

- C. & A. R. R. Co. v. Pearson, Admr., 184 Ill. 386.
- Partlow v. I. C. R. R. Co., 150 Ill. 322.
- C. C. C. & St. Ry. Co. v. Baddeley, 150 Ill. 328.
- T. St. L. & K. C. R. R. Co. v. Cline, 135 Ill. 42.
- C. & A. R. R. Co. v. Adler, 129 Ill. 335.
- T. H. & I. Ry. Co. v. Voelker, 129 Ill. 541.
- C. C. Ry. Co. v. Robinson, 127 Ill. 9.

#### **n. Practice as to.**

(See also PRACTICE.)

Question of—cannot be raised as a matter of law by defendant, where he has secured an instruction submitting the question to the jury as a question of fact.

- C. T. T. R. R. Co. v. Schmelling, 197 Ill. 619.

Is not reviewed by supreme court.

- W. C. St. Ry. Co. v. Foster, 175 Ill. 396.

Finding by appellate court and reversal because of, without remanding, ends case.

- Hawk v. C. B. & H. Ry. Co., 147 Ill. 399.

#### **o. Where Servant is Assured of Safety.**

(See also ASSURANCE OF SAFETY.)

Assurance of safety does not excuse.

- Baler v. Selke, 211 Ill. 512.

#### **p. Where Servant Works Under Orders.**

(See also ORDERS.)

When working under orders—not shown.

- Ill. Steel Co. v. Wierzbicki, 206 Ill. 201.

**q. Where There is a Promise to Repair.**

(See also PROMISE TO REPAIR.)

Not shown although plaintiff had knowledge of danger—promise to repair.

Swift & Co. v. O'Neill, 187 Ill. 337.

**r. Miscellaneous Rules and Findings.**

That servant knew rules of company, is not evidence of.

C. C. Ry. Co. v. Lowitz, 218 Ill. 26.

Where there is a safe way of doing the work open to plaintiff—rule as to.

C. & A. R. R. Co. v. Walters, 217 Ill. 87.

Of plaintiff—must be shown to have contributed to the injury.

Ehlen v. O'Donnell, 205 Ill. 38.

Distinguished from assumed risk.

C. & E. I. R. R. Co. v. Heerey, Admr., 203 Ill. 492.

Contributory negligence in action for injury from bite of dog—rule as to.

C. & A. R. R. Co. v. Kuckkuck, 197 Ill. 304.

Jumping from boat to dock—where fair men would differ as to, held not.

Consolidated Coal Co. v. Bokamp, 181 Ill. 9.

Not observing railroad rules is not per se.

L. S. & M. S. Ry. Co. v. Parker, 131 Ill. 557.

Must appear to contribute to the injury.

L. S. & M. S. Ry. Co. v. Parker, 131 Ill. 557.

And comparative negligence—rule as to (obsolete).

Stratton v. Cent. City H. Ry. Co., 95 Ill. 25.

In failing to discover danger—not shown.

*Consolidated Coal Co. v. Bruce*, 150 Ill. 449.

While working in unusual place—not shown.

*C. W. & V. Coal Co. v. Moran*, 210 Ill. 9.

In failing to discover defect in machine—when not.

*Monmouth M. & M. Co. v. Erling*, 148 Ill. 521.

Rule that master is under no greater obligation to care for servant, than servant is to care for himself. Instruction as to held properly refused.

*Western Stone Co. v. Muscial*, 196 Ill. 382.

What is not—contributory negligence in passenger getting off a steamboat in unusual way.

*Keokuk L. Packet Co. v. True*, 88 Ill. 608.

Contributory negligence—when excused by wanton negligence.

*C., B. & Q. R. R. Co. v. Dickson*, 88 Ill. 431.

Contributory negligence by lady—remained in buggy unhitched at curb while blasting was going on—for jury.

*City of Joliet v. Sewer*, 86 Ill. 402.

Contributory negligence by brakeman in doing his work in unusual way shown.

*C. & A. R. R. Co. v. Rush*, 84 Ill. 570.

When the doctrine of fellow-servant does not apply—conductor killed in collision.

*C., B. & Q. R. R. Co. v. Mallen*, 84 Ill. 109.

Defective mine cage—willful negligence by defendant, excuses contributory negligence.

*Litchfield Coal Co. v. Taylor*, 81 Ill. 590.

One who irritates a dog and is bitten cannot recover.

*Keightlinger v. Egan*, 65 Ill. 235.

Struck by train while standing on platform between tracks. Contributory negligence not shown.

*C. & A. R. R. Co. v. Wilson*, 63 Ill. 167.

**s. Contributory Negligence Held Not Shown.**

Not shown where engineer shut off steam by one valve and was injured, but could have shut it off by another without being injured.

North Amer. Rest. & Oyster House v. McElligott, Admr., 227 Ill. 317.

Facts held not showing as matter of law.

Chicago Suburban Water Co. v. Hyslop, 227 Ill. 308.

Going upon defective scaffolding—not shown.

Schillinger Bros. Co. v. Smith, 225 Ill. 74.

Putting hand under knife of slab cutter to remove cut slabs is not as a matter of law, where the regular method of removing from behind machine is made impractical by the master.

U. S. W. E. & P. Co. v. Butcher, 223 Ill. 638.

Held not shown—workman being lowered into chimney by his foreman—swing tipped.

Springfield Boiler Mfg. Co. v. Parks, 222 Ill. 355.

Not shown as a matter of law.

Shickle-Harrison & H. Iron Co. v. Beck, 212 Ill. 268.

National E. & S. Co. v. McCorkle, 219 Ill. 557.

While working near known danger—not shown.

Ill. Steel Co. v. Olste, 214 Ill. 181.

Contributory negligence in handling wire—not shown.

Commonwealth Elec. Co. v. Melville, 210 Ill. 70.

Evidence of held insufficient.

C. & A. R. R. Co. v. Ralby, 203 Ill. 310.

Evidence of held insufficient.

Chicago Junction Ry. Co. v. McGrath, 203 Ill. 511.

Evidence of held insufficient.

N. C. St. Ry. Co. v. Cossar, 203 Ill. 608.



Held not shown as a matter of law—foreman fell off dump-pile in night time.

*Iroquois Furnace Co. v. McCrea*, 191 Ill. 340.

Not shown as matter of law where servant relied on master and could not foresee danger.

*Watson Cut Stone Co. v. Small*, 181 Ill. 366.

Held not shown—where watchman is run down in yards while standing near track.

*St. L. A. & T. H. R. R. Co. v. Eggman*, 161 Ill. 155.

Contributory negligence not imputable to child—when.

*C. & A. R. R. Co. v. Gregory*, 58 Ill. 226.

Leaving horse untied in street is contributory negligence.

*W. U. T. Co. v. Quinn*, 56 Ill. 319.

Contributory negligence by boy of twelve—rule.

*Kerr v. Forgue*, 54 Ill. 482.

To attempt to leave train after it has started after stopping at station—held contributory negligence.

*I. C. R. R. Co. v. Slatton*, 54 Ill. 133.

Contributory negligence—rule as to where passenger jumps off moving train.

*C. & A. R. R. Co. v. Randolph*, 53 Ill. 510.

Contributory negligence—deaf person crossing railroad track—shown.

*I. C. R. R. Co. v. Buckner*, 28 Ill. 299.

Contributory negligence shown—passing between cars of freight train.

*C., B. & Q. Ry. Co. v. Dewey, Admx.*, 26 Ill. 255.

Discussion of contributory negligence and cases as to. Comparative negligence rule stated and established.

*G. & C. U. Ry. Co. v. Jacobs*, 20 Ill. 478.

Contributory negligence—not shown where passenger riding on the seat of stage coach jumped when axle broke.

*Frink v. Potter*, 17 Ill. 406.

Jumping from stage coach in break-down not contributory negligence.

Frink v. Potter, 17 Ill. 406.

Contributory negligence by passenger—running from car to car scuffling and playing—may be—when.

G. & C. U. R. R. Co. v. Fay, 16 Ill. 558.

It is contributory negligence for a passenger to leave the car he is riding in and needlessly go into another of the same train—when.

G. & C. U. R. R. Co. v. Yarwood, 15 Ill. 468.

First case—discussion of rule as to contributory negligence.

Aurora Branch R. R. Co. v. Grimes, 13 Ill. 585.

Plaintiff must show his negligence has not concurred in causing injury.

Aurora Branch R. R. Co. v. Grimes, 13 Ill. 585.

If both parties equally at fault—no recovery.

Aurora Branch R. R. Co. v. Grimes, 13 Ill. 585.

#### **t. Contributory Negligence Held Shown.**

Shown as a matter of law—track repairer run down by engine—failed to keep watch.

Belt Railway Co. v. Skszypczak, 225 Ill. 242 (212 Ill. 429 distinguished).

Servant selecting a dangerous mode of work when a safe one is open, is guilty of want of due care and cannot recover.

I. C. R. R. Co. v. Swift, 213 Ill. 307.

Held “clearly shown”—“yard clerk” hit by engine.

Wilson v. Ill. C. R. R. Co., 210 Ill. 603.

Evidence of held sufficient.

O'Donnell v. McVeagh et al., 205 Ill. 23.

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Beldler et al. v. Branshaw, 200 Ill. 425.

Shown—safe being moved across sidewalk fell through.

Kohlhof v. City of Chicago, 192 Ill. 249.

Shown as a matter of law—porter walked into open elevator shaft.

Browne, Admr., v. Siegel Cooper & Co., 191 Ill. 226.

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E. St. L. Ice Co. v. Crow, 155 Ill. 74.

Shown as a matter of law—doing work in unusual way.

Werk v. Ill. Steel Co., 154 Ill. 427.

Shown where rule of railroad company was to approach station slowly and engineer violated rule, and collision resulted in his death.

Neer v. I. C. R. R. Co., 151 Ill. 141.

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Myers v. I. St. L. Ry. Co., 113 Ill. 386.

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C. & E. I. R. R. Co. v. Crose, 214 Ill. 602.

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C. C. Ry. Co. v. Fennimore, 199 Ill. 9.

When the evidence is conflicting it is a question of fact for the jury.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9.

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*Watson Cut Stone Co. v. Small*, 181 Ill. 366.

Is a question of law when reasonable minds would not differ as to.

*W. C. St. Ry. Co. v. Liderman*, 187 Ill. 463.

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*City of Chicago v. McLean*, 133 Ill. 148.

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*C. & E. I. Ry. Co. v. Coggins*, 212 Ill. 369.

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*Feitl v. C. C. Ry. Co.*, 211 Ill. 279.

Instructions—contributory negligence of parent.

*C. W. & V. Coal Co. v. Moran*, 210 Ill. 9.

Instructions as to—where means of knowing is equal.

*Belt Ry. Co. v. Confrey*, 209 Ill. 344.

Instructions—as to—refused—reversible error.

*Lake St. "L" Ry. Co. v. Shaw*, 203 Ill. 29.

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*True & True Co. v. Woda*, 201 Ill. 315.

Instructions—that it is to board moving car—bad.

*C. & A. R. R. Co. v. Gore*, 202 Ill. 188.

Instructions by court as to—approved.

*P. C. C. & St. L. R. R. Co. v. Robson*, 204 Ill. 254.

Instruction that not involved where statute violated—approved.

*Donk Bros. Coal Co. v. Straff*, 200 Ill. 483.

**w. Force of Where Statute or Ordinance is Violated.**

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Spring Valley Coal Co. v. Rowatt, 196 Ill. 156.

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Amer. Car &amp; F. Co. v. Armentraut, 214 Ill. 509.

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Spring Valley Coal Co. v. Patting, 210 Ill. 342.

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C. &amp; E. I. R. R. Co. v. Mochell, 193 Ill. 208.

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Western A. C. &amp; C. Co. v. Beaver, 192 Ill. 333.

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Odin Coal Co. v. Denman, 185 Ill. 413.

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Pawnee Coal Co. v. Royce, 184 Ill. 402.

Is not involved where wilful and wanton negligence is shown on the part of defendant.

I. C. R. R. Co. v. King, 179 Ill. 91.

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Immaterial in dram shop case, if caused by the intoxication.

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Lowry v. Coster, 91 Ill. 182.

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#### **To next of kin.**

Collateral. Next of kin of an unmarried man can recover only nominal damages where it is not shown they receive financial aid from him—legal advice held not to be aid.

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*Bradley v. Sattler*, 156 Ill. 603.

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*C. & G. T. Ry. Co. v. Gasinowski*, 155 Ill. 189.

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*I. C. R. R. Co. v. Slater*, 129 Ill. 91.

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C. & N. W. Ry. Co. v. Chisholm, 79 Ill. 584.

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*C. & M. Elec. Ry. Co. v. Ullrich*, 213 Ill. 170.

*City of Gibson v. Murray*, 216 Ill. 589.

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*Barnett & Record Co. v. Schlapka*, 208 Ill. 426.

Instruction as to measure of—bad but cured.

*C. C. Ry. Co. v. Mead*, 206 Ill. 174.

Instruction as to rupture—disapproved.

*Vocke v. City of Chicago*, 208 Ill. 192.

Instruction as to damages "to widow and next of kin" reversible error.

Muren Coal & Ice Co. v. Howell, 204 Ill. 515.

Instruction as to—allegation of permanent injury.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Instruction as to measure of—harmful error.

N. C. St. Ry. Co. v. Irwin, Exrx., 202 Ill. 345.

Springfield C. Ry. Co. v. Puntenny, 200 Ill. 9.

When it is harmful error not to limit to the ad damnum by instruction the amount that may be given.

Spring Valley Coal Co. v. Rowatt, 196 Ill. 156.

Measure of—instruction as to approved.

C. & E. I. R. R. Co. v. Kneirim, 152 Ill. 458.

Instruction mentioning amount of ad damnum—good.

Tudor Iron Works v. Weber, 129 Ill. 535.

Instruction as to statutory limit of—not error

L. S. & M. S. Ry. Co. v. Parker, 131 Ill. 557.

## **j. Excess of.**

As to excessive.

C. U. T. Co. v. Miller, 212 Ill. 49.

Is question of fact settled by appellate court.

C., R. I. & P. Ry. Co. v. Steckman, 224 Ill. 500.

Excess of—question for jury and appellate court.

United Brewery Co. v. O'Donnell, 221 Ill. 334.

C. C. Ry. Co. v. Mead, 206 Ill. 174.

Damages—Whether excessive—is question of fact.

The Variety Mfg. Co. v. Landaker, Admx., 227 Ill. 21.

Excess of—is question of fact—rule as to is matter of law.

Christian v. Irwin, 125 Ill. 619.

**Question of excess of—settled by appellate court.**

- Boyce v. Talleman, 183 Ill. 115.  
C. & W. I. Ry. Co. v. Ptacek, 171 Ill. 9.  
I. C. R. R. Co. v. Davenport, 177 Ill. 110.  
N. C. St. Ry. Co. v. Anderson, 176 Ill. 635.  
C. & A. R. R. Co. v. Clausen, 173 Ill. 100.  
I. C. R. R. Co. v. Cole, 165 Ill. 334.  
N. Y. C. & St. L. R. R. Co. v. Luebeck, 157 Ill. 595.  
I. C. R. R. Co. v. Frelka, 110 Ill. 498.  
C. & A. R. R. Co. v. Bonifield, 104 Ill. 223

**Question of—not considered in supreme court.**

- C. C. Ry. Co. v. Fennimore, 199 Ill. 9.

**Held excessive but cured by remittitur.**

- C. C. Ry. Co. v. Anderson, 182 Ill. 298.

Verdict will not be reversed for excess of—where amount does not denote prejudice or passion.

- N. C. St. Ry. Co. v. Zeiger, 182 Ill. 9.

**What are not excessive.**

- C. U. T. Co. v. Miller, 212 Ill. 49.

Held not excessive—bone of leg calloused. Five thousand dollars.

- Grossman v. Cosgrove, 174 Ill. 383.

Seven hundred and sixty-eight dollars for sprained ankle held not excessive.

- City of Aurora v. Hillman, 90 Ill. 61.

Damages \$2,500 held excessive for injury to knee.

- C. R. I. & P. Ry. Co. v. Payzant, 87 Ill. 125.

Twenty-two hundred dollars held excessive for injury to ankle.

- Kolb v. O'Brien, 86 Ill. 210.

Two thousand dollars not excessive for death of child six years old.

- C. & A. R. R. Co. v. Becker, 84 Ill. 483.

Eight hundred dollars for death of child four years old not excessive.

- City of Chicago v. Hessing, 83 Ill. 204.

One thousand dollars held excessive—passenger ejected from train—not personally injured.

C. & N. W. Ry. Co. v. Chisholm, 79 Ill. 584

Fifteen hundred dollars held not excessive where leg broken and ankle sprained.

City of Chicago v. Brophy, 79 Ill. 277.

Remittitur will correct excessive damages—when.

I. C. R. R. Co. v. Ebert, 74 Ill. 399.

Two thousand five hundred dollars is excessive damage for expulsion of passenger from car without violence or injury.

C. R. I. & P. Ry. Co. v. Riley, 74 Ill. 70.

Two thousand dollars held excessive in dram shop case.

Albrecht v. Walker, 73 Ill. 69.

Eighty-one hundred dollars held not excessive where child seven years of age lost one leg and right hand crushed and two fingers amputated.

C. & A. R. R. Co. v. Murray, 71 Ill. 601.

Question of excessive damages is waived unless raised on motion for new trial—exemplary damages allowed for assault and battery where the trespass is unlawful.

Jones v. Jones, 71 Ill. 562.

Twenty-five hundred dollars not excessive where bone of right leg broken leaving permanent injury.

Northern L. Packet Co. v. Binniger, 70 Ill. 571.

Eight thousand dollars held not excessive where teacher of instrumental music lost one arm.

C. & A. R. R. Co. v. Wilson, 63 Ill. 167.

Thirty-eight hundred dollars not excessive where child rendered idiotic by injury.

C. & A. R. R. Co. v. Gregory, 58 Ill. 226.

Five thousand dollars held not excessive—injury to spine.

P. C. & St. L. Ry. Co. v. Thompson, 56 Ill. 138.

Eighteen thousand dollars held excessive where plaintiff lost both legs—rule.

C. & N. W. Ry. Co. v. Jackson, 55 Ill. 492.

Eleven hundred dollars held not excessive where sick man was put off train and his disease was aggravated by walking a mile and a half.

I. C. R. R. Co. v. Sutton, 53 Ill. 397.

Fifteen hundred and twenty-five dollars held excessive for sprained ankle.

C. B. & Q. R. R. Co. v. Dunn, 52 Ill. 451.

Five thousand dollars held excessive where no bones broken or serious injury.

C. R. I. & P. Ry. Co. v. McCara, 52 Ill. 296.

Exemplary—not in action against city.

City of Chicago v. Langless, 52 Ill. 256.

Five thousand dollars held excessive where laboring man killed did not earn half the interest on that sum.

I. C. R. R. Co. v. Weldon, 52 Ill. 290.

Fifty-eight hundred dollars for loss of left foot held excessive.

C. R. I. & P. Ry. Co. v. McLean, 40 Ill. 218.

Excessive—no reversal unless prejudice or passion shown.

I. C. R. R. Co. v. Simmons, 38 Ill. 242.

One thousand dollars for ejecting passenger—no injury—held excessive.

C. B. & Q. R. R. Co. v. Parks, 18 Ill. 460.

Excessive—when the jury's finding will not be disturbed—discussion assault and battery.

Blanchard et al. v. Morris, 15 Ill. 35.

Damages—amount of will not reverse unless jury were manifestly “governed by passion, partiality or corruption.” Must be glaringly excessive at first blush.

McNamara v. King, 2 Gil. 432.

**DEFECTIVE SIDEWALKS.****DECAYED BOARDS.****FELL INTO HOLE.****LOOSE BOARDS.****FELL UPON.****MISCELLANEOUS DEFECTS.****a. Decayed Boards.**

**Defective sidewalk.** Stepped upon and broke through. Arm and leg contused; bones of hand broken; knee injured. Judgment \$1,700. Affirmed.

*City of Evanston v. Richards*, 224 Ill. 444.

**Decayed boards on bridge—fell through.** Plaintiff was injured by falling through decayed boards on the sidewalk of a public bridge. Three trials. Complication of diseases. Judgment \$20,000. Affirmed.

*City of Elgin v. L. F. Nofs*, 212 Ill. 20 (10-04).

**Decayed boards on bridge.** Plaintiff fell through defective sidewalk on a bridge. Inspection day before. Conflict as to condition. Judgment \$15,000. Reversed and remanded in supreme court because magnifying glass was used by jury to examine defective boards.

*City of Elgin v. Nofs*, 200 Ill. 252 (12-02).

**Decayed board—broke through.** Plaintiff stepped on end of decayed board in sidewalk which broke off. Sprained ankle and back hurt. Judgment for plaintiff. Affirmed.

*City of Beardstown v. Clark*, 204 Ill. 524 (10-03).

**Decayed boards in hallway of building.** Tenant of defendant fell through decayed boards in hallway of defendant's

building. Judgment \$1,000. Reversed in supreme court for failure of proof that the proximate cause of injury was the decayed boards.

*Burke v. Hulett, Admr., 216 Ill. 545.*

**Defective sidewalk—board broke.** Judgment \$2,000. Affirmed. (74 Ill. App. 99 Affd.)

*City of E. Dubuque v. Burhyte, 173 Ill. 553.*

**Defective sidewalk—stringers decayed.** Judgment \$1,000. Affirmed.

*City of Bloomington v. Osterle, 139 Ill. 120.*

**Defective sidewalk.** Decayed stringers. Attempt to repair. Boards loose—tipped up—lady caught foot and fell. Wrist dislocated; shock to nervous system. Judgment \$1,000. Affirmed.

*Town of Wheaton v. Hadley, 131 Ill. 640.*

**Defective sidewalk—stringers decayed.** Board tipped up when companion of plaintiff stepped on end of it, tripping him up. Could have taken another safe route. Did not know walk was unsafe. Earned \$12 per week. Ankle severely sprained—laid up six months. Judgment \$768.75. Affirmed.

*City of Aurora v. Hillman, 90 Ill. 61.*

#### **b. Fell Into Hole.**

**Defective cover on coal hole in sidewalk.** Pedestrian fell over. Knee cap broken in two places. Much traveled street in Chicago. Judgment \$3,500. Affirmed.

*City of Chicago v. Jarvis, 226 Ill. 614.*

**Hole in sidewalk.** Left foot caught. Narr. amended after two years by changing name of street where injury occurred. Judgment \$3,000. Reversed without remanding in appellate court on ground of variance in description of the place of in-



jury. The supreme court reversed the appellate court and sent the case back to the appellate court with directions holding appellate court had no authority to find the facts as they did (see 208 Ill. 106).

*Gilmore v. City of Chicago*, 224 Ill. 490.

**Open coal hole—fell into.** Plaintiff fell through coal hole. Vault underneath used exclusively by one tenant whose lease covenanted to keep premises in repair. Safe when premises were leased. Judgment \$1,000 against owner. Reversed and remanded in supreme court. Owner not liable; tenant liable.

*W. Chicago Masonic Assn. v. Cohn*, 192 Ill. 210 (10-01).

**Open trap door in walk—fell into.** Plaintiff fell through trap door in sidewalk. Suit against city dismissed. Defendant defaulted. Jury impanelled. Judgment \$1,720. Reversed and remanded for overruling motion to vacate default, made in term.

*Schueler v. Mueller*, 193 Ill. 402 (12-01).

**Open coal hole—fell into.** Plaintiff fell into open coal hole in front of business building on public street. Judgment \$1,000. Affirmed.

*Village of Altamont v. Carter*, 196 Ill. 286 (4-02).

**Defective sidewalk—hole in.** Plaintiff caught foot and fell. Injury to knee. Judgment for plaintiff. Affirmed.

*Village of Chatsworth v. Rowe*, 166 Ill. 114.

**Defective sidewalk.** Lady stepped into hole. Rupture caused. Incapacitated for work. Judgment \$1,000. Affirmed.

*Village of Cullom v. Justice*, 161 Ill. 372.

**Defective sidewalk.** Stepped into hole that had existed three or four weeks. Night time. Plaintiff knew of the hole. Judgment \$2,500. Affirmed.

*Village of Clayton v. Brooks*, 150 Ill. 97.

**Defective sidewalk—hole covered by iron plate.** Plaintiff stepped on the plate which tipped, throwing her into the hole. Action against the private owner of the premises. Judgment \$2,500. Affirmed.

McDonald v. Logi, 143 Ill. 487.

**Defective sidewalk.** Trap door left open by owner of premises for his own use. Plaintiff carried large bundle under arm obstructing her view. Suit against city. Judgment \$1,500. Affirmed.

City of Chicago v. Babcock, 143 Ill. 358.

**Defective sidewalk.** Walk had never been built on a space of about four feet. A plank had been laid lengthwise across the space. Lady fell into the space on dark night. Had no prior knowledge. Judgment. Affirmed.

City of Chicago v. McLean, 133 Ill. 148.

**Defective sidewalk platform.** Opening in stone walk under show window. Building six feet from sidewalk; stone flagging between sidewalk and line of building. Girl nine years fell into the hole while going to the store in the building at night. No railing or guard to protect hole. Judgment for plaintiff. Affirmed.

Tomle v. Hampton, 129 Ill. 381.

**Defective sidewalk.** Lady stepped into hole and fell. Judgment \$2,000. Affirmed.

City of Sterling v. Merrill, 124 Ill. 522.

**Defective cover to coal hole in sidewalk.** Pedestrian fell through to cellar below. Paralysis of back and arm. Action against city and owner of premises jointly. Judgment \$6,000. Reversed because of erroneous instruction as to measure of damages.

City of Peoria v. Simpson, 110 Ill. 294.

**Defective sidewalk.** Stepped in hole and was thrown upon railway track. Nails caught clothing and held deceased. Struck by train causing death. Five trials. Judgment \$3,500. Affirmed.

City of Chicago v. Schmidt, Admx., 107 Ill. 186.

**Defective sidewalk.** Across ditch four feet deep. Plaintiff fell on in the night time. Judgment \$1,500. Affirmed.

Village of Fairbury v. Rogers, 98 Ill. 554.

**Defective sidewalk—opening in unprotected.** Building being constructed. Excavation made for sidewalk. No lights near. No railing or fence. Boards loose—placed over hole. Pedestrian stepped on the loose board in night time. It broke, throwing him into the hole. Action against person making the excavation, and city. Judgment \$600. against owner. Affirmed.

Hutchison v. Collins, 90 Ill. 410.

**Defective sidewalk.** Lady knew of hole in sidewalk—was looking for it. Walk covered with snow. Storm blew snow in her face. Other walks were equally unsafe. Judgment for plaintiff. Affirmed.

City of Aurora v. Dale, 90 Ill., 46.

### c. Loose Boards.

**Defective sidewalk—one plank was out of the sidewalk.** Other boards loose. Loose board tipped up, tripping plaintiff. The walk had been out of repair for two months. Judgment for plaintiff. Affirmed.

City of Chicago v. McNelly, 227 Ill. 14.

**High sidewalk—no railing—loose board—hernia.** Sidewalk four feet high. No guards or railing. Boards missing and loose. Plaintiff passing about 9 p m., stepped on loose board and was thrown to the ground. Two hernia resulted. Use of right arm impaired. Judgment \$4,500. Affirmed.

City of Chicago v. Mary Saldman, 225 Ill. 626 (2-07).

**Loose plank tipped—across a gutter.** Injury due to fall on defective sidewalk. Crossing or plank lengthwise over a gutter. Loose planks tipped. Knee injured. Judgment \$1,350. Affirmed.

Town of Normal v. Bright, 223 Ill. 99 (10-06.)

**Loose board tipped up tripping pedestrian.** Man injured by fall on defective sidewalk. Loose plank—decayed. Leg fractured between knee and hip. Knew of defects. Confined four months. Judgment \$1,000. Affirmed.

City of Matton v. Faller, 217 Ill. 273 (10-06).

**Loose board stepped on, flew up.** Lady injured by fall on defective sidewalk. Stepped on edge of board which flew up striking her in the stomach. Judgment for plaintiff. Affirmed.

City of Gibson v. Belle Murray, 216 Ill. 589 (10-05).

**Loose board tipped up.** Woman, 45 years old, fell on defective sidewalk. Had passed over walk morning of same day. Three ladies walked abreast. One stepped on edge of board which tipped, tripping plaintiff. Walk seven years old. Repaired many times. Paralysis. Judgment \$8,500. Affirmed.

Village of Willmette v. Katherine Brachle, 209 Ill. 621 (6-04).

**Loose board tipped up.** Plaintiff injured by fall on defective sidewalk. Board tipped up. Judgment for plaintiff. Reversed and remanded for instructions refused, as to disease existing before and at time of accident.

City of Rock Island v. Starkey, 189 Ill. 515 (4-01).

**Defective sidewalk—loose board tipped.** Plaintiff tripped on a loose board and fell; 10 p. m. Knew sidewalk was out of repair. Judgment \$1,000. Affirmed.

City of Streator v. Chrisman, 182 Ill. 215 (10-99).

**Defective sidewalk—tripped on loose board—damage.** Loose board on sidewalk tripped plaintiff. Fell striking face. Recovered in two months. Judgment \$1,500. Reversed and remanded because of excessive damages (see 74 Ill. App. 277).

City of Dixon v. Scott, 181 Ill. 116 (10-99).

**Defective sidewalk—board slipped out of place.** High sidewalk connected with lower one by a loose plank which slipped, throwing plaintiff to ground. Judgment for plaintiff. Reversed in appellate court without remanding. Reversed in supreme court.

Hogan v. City of Chicago, 168 Ill. 551.

**Defective sidewalk—board tipped.** Subjective injury. Lady injured. Refusal of physician to testify. Proceeding for contempt.

Dixon v. The People, 168 Ill. 179.

**Defective sidewalk.** Loose plank on cross walk over ditch tipped up edgewise. Foot went into ditch—no lights—lady fell—spinal injury. Judgment \$6,000. Affirmed.

Village of Jefferson v. Chapman, 127 Ill. 439.

**Defective sidewalk.** Loose boards. Plaintiff fell. Wrist broken and dislocated. Judgment \$1,100. Affirmed.

City of Rock Island v. Cuinely, 126 Ill. 408.

**Defective sidewalk—loose plank.** Lady fell upon. No actual notice shown. Defect had existed some time. Judgment \$1,200. Affirmed.

City of Chicago v. Dalle, 115 Ill. 386.

**Defective sidewalk.** Boy ten years old fell over loose board. Stick with which he was driving hoop penetrated his eye, causing injury from which he died two months later. Judgment \$2,500. Affirmed.

City of Chicago v. Keefe, 114 Ill. 222.

**Defective sidewalk—Loose boards.** Two ladies walking over—one stepped on end of board, the other end flew up tripping plaintiff. Injury to uterus. College student. Judgment \$3,500. Affirmed.

City of Bloomington v. Perdue, 99 Ill. 329.

**d. Fell Upon.**

**Defective sidewalk.** Lady fell upon; knee injured, synovitis, miscarriage. Discussion of injuries from like accidents—cases. Judgment for plaintiff. Affirmed.

*City of Chicago v. Didier*, 227 Ill. 571.

**Defective sidewalk.** Fell on and was thrown against live wire on ground—recovery against Electrical company. Judgment \$2,500. Affirmed.

*City of Roodhouse v. Christian*, 158 Ill. 139.

**Defective sidewalk.** Lady fell upon. Displacement of womb. Constant inflammation and pain; permanent injury. Affirmed with reluctance by appellate court because of large damages given. Judgment \$15,000. Affirmed.

*City of Chicago v. Leseth*, 142 Ill. 642.

**Defective sidewalk.** Lady fell upon. Knowledge of defect shown. Judgment for plaintiff. Affirmed.

*City of Sandwich v. Dolan*, 141 Ill. 432.

**Defective sidewalk.** Pedestrian fell and was permanently injured. Judgment for plaintiff. Affirmed.

*City of Chicago v. Moore*, 139 Ill. 201.

**Defective sidewalk.** Plaintiff stumbled and fell upon. Judgment for plaintiff. Affirmed.

*Village of Sheridan v. Hibbard*, 119 Ill. 307.

**Defective sidewalk.** Lady fell upon and was injured. Judgment \$1,500. Affirmed.

*City of Chicago v. Stearns*, 105 Ill. 554.

**Defective sidewalk.** School teacher fell upon and was permanently injured. Judgment for plaintiff. Affirmed.

*City of Bloomington v. Chamberlain*, 104 Ill. 268.

**Ice on depot station steps.** Lady slipped on ice on station steps and fell. Was on way to station to take car. Judgment for plaintiff. Affirmed.

Ill. Cent. R. R. Co. v. Mary Keegan, 210 Ill. 150 (6-04).

**Pedestrian fell on defective walk.** Plaintiff injured by defective sidewalk. Injury to ankle. Night time. Walk old and out of repair. Judgment \$1,200. Reversed and remanded because of erroneous instruction on ordinary care (109 Ill. Appt. 135).

City of Macon v. Holcomb, 205 Ill. 643 (12-03).

**Peg extended above walk—stumbled over it.** Defective sidewalk. Peg left on one end of decayed board after attempted repairs. Peg extended above walk. Plaintiff stumbled over it. In same condition several weeks. Judgment for plaintiff. Affirmed.

City of Taylorville v. Stafford, 196 Ill. 288 (4-02.)

**No railing—no light—walked off high sidewalk.** Defective sidewalk. Plaintiff walked off the end of a high sidewalk. No railing—no lights. Sidewalk was a private ground but connected with public sidewalk and used by public. Judgment \$6,000. Affirmed.

City of Chicago v. Baker, 195 Ill. 54 (2-02).

**Refuse accumulated on walk—fell on.** Dirt and rubbish had accumulated on sidewalk. Snow and ice on the rubbish. City had notice. Plaintiff fell. Verdict directed for defendant. Reversed and remanded for instruction ignoring material evidence.

Bibbins v. City of Chicago, 193 Ill. 359 (12-01).

#### **e. Miscellaneous Defects.**

**Defective sidewalk—flagstone cracked.** Tipped. Fell on shoulder. Continuing pain. Judgment \$1,500. Affirmed.

City of Joliet v. Looney, 159 Ill. 471.

**Action by city against railroad company to recover for damages paid by city for injury caused by defective sidewalk on railroad right of way.** Ordinance required railroad company to keep walks in repair. Demurrer to Narr. sustained. Action affirmed in upper courts. No cause of action, the railroad company being under no duty to keep the sidewalk in repair.

*City of Bloomington v. I. C. R. R. Co.* 154 Ill. 539.

**Defective sidewalk in suburbs on little used street.** Not repaired in four years. Judgment \$1,500. Affirmed.

*City of Flora v. Naney*, 136 Ill. 45.

**Defective sidewalk out of repair several months.** Plaintiff had passed over walk many times and knew its condition. Boards loose. Could have safely taken another street. Judgment for plaintiff. Reversed in supreme court because of instructions as to passing over bad sidewalk.

*City of Sandwich v. Dolan*, 133 Ill. 177.

**Boy pushed off high sidewalk by another boy.** No protecting railing. Action against city. Judgment for plaintiff. Affirmed.

*Village of Carterville v. Cook*, 129 Ill. 152.

**Defective sidewalk on railroad right of way.** Walk ran from public street to depot of railroad company for accomodation of travelers. Judgment for plaintiff. Affirmed.

*Village of Mansfield v. Moore*, 124 Ill. 133.

**Defective sidewalk.** Lady injured—mother of eight children. Could not do housework after injury. Miscarriage. Judgment for plaintiff. Affirmed.

*City of Joliet v. Conway*, 119 Ill. 490.

**Defective sidewalk.** Sidewalk on which plaintiff was standing fell, throwing him to ground. Back injured. Judgment \$2,000. Affirmed.

*Village of Warren v. Wright*, 103 Ill. 298.



**Defective sidewalk.** On frequented street, four feet above ground. Boards decayed. Lady fell through. Fracture of the vertebrae. Judgment \$7,500. Affirmed.

City of Chicago v. Herz, 87 Ill. 541.

**Defective sidewalk.** Plaintiff stepped into a hole after dark. Paralysis resulting. Judgment \$3,000. Affirmed.

City of Elgin v. Renwick, 86 Ill. 498.

**Defective sidewalk, loose plank.** End tipped up. Lady fell against and fell. Judgment \$7,500. Reversed on the ground that notice to the city was not shown.

City of Chicago v. Murphy, 84 Ill. 224.

**Defective sidewalk.** Lady fell and broke her leg. One sidewalk was at grade and another portion ten or twelve inches below grade and step was placed between two walks. There was ice on the walk, plaintiff put her foot on the step when it slipped and she fell. The step was six or seven inches wide. Judgment \$2,000. Reversed because of an instruction as to care required by city.

City of Chicago v. Bixby, 84 Ill. 82.

**Defective sidewalk.** Plaintiff fell into excavation improperly guarded and unlighted. Judgment \$4,500. Reversed for excessive damages.

City of Freeport v. Isbell, 83 Ill. 440.

**Lady fell into excavation in sidewalk.** Stepped on edge of excavation which gave way and she fell to bottom—nine o'clock in evening—street lamps lighted—lights in building near by. Dirt and rubbish on sidewalk—no guards around excavation. Judgment \$2,000. Reversed on the ground that due care not shown.

Kepperly v. Ramsden, 83 Ill. 354.

**Defective sidewalk.** Decayed board—splinter broke off leaving a hole five inches wide and eighteen inches long. Plaintiff

had passed over same walk several times before injury. Judgment for plaintiff. Reversed on ground that plaintiff did not use due care—should have observed condition of sidewalk.

Village of Kewanee v. Depew, 80 Ill. 119.

**Defective sidewalk.** Plaintiff stepped on a piece of glass which was inserted in the walk, slipped, fell and was injured. The surface of the glass was even with the surface of the walk and was placed there to afford light to the area beneath—slight fall of snow covered sidewalk. Judgment for plaintiff. Reversed because of refusal of instruction on due care by defendant in constructing said sidewalk.

City of Chicago v. McGiven, 78 Ill. 347.

**Defective sidewalk.** No facts stated. Judgment for \$250. Affirmed.

City of Springfield v. Doyle, 76 Ill. 202.

**Defective sidewalk.** Plaintiff, a painter, fell upon—injuring his shoulder and causing rupture—arm permanently injured. Judgment \$3,000. Affirmed.

City of Chicago v. Elzeman, 71 Ill. 131.

**Defective sidewalk.** Deceased was twelve years of age. While passing over sidewalk it gave away throwing him to bottom of the vault below. Judgment \$2,800. Reversed because of instruction.

City of Chicago v. Scholten, 75 Ill. 469.

**Defective sidewalk.** Plaintiff knew of the defect and also of another sidewalk over which he could pass with safety. Attempted to step over a place where planks were out and caught his foot on edge of board. Judgment for defendant. Affirmed.

Lovenguth v. City of Bloomington, 71 Ill. 238.

**Defective sidewalk.** Woman fell causing injury to her foot—no permanent injury. Judgment \$4,000. Reversed because of excessive damages.

*City of Chicago v. Kelley*, 69 Ill. 475.

**Defective covering over sidewalk vault.** Flag stone broken; plaintiff fell and was injured. Action was first brought against city and recovery had. This action is by the city against the owner of the premises to recover the amount of judgment paid by the city. Judgment for plaintiff. Reversed.

*Gridley v. City of Bloomington*, 68 Ill. 47.

**Defective sidewalk.** The sidewalk had been constructed wrongly in the first instance—four feet wide and six feet above level of the street without any railing or guards to protect it. Plaintiff rendered a permanent invalid. Fell off in night time. Judgment \$5,000. Affirmed.

*City of Chicago v. Langlass*, 66 Ill. 361 (same case as 52 Ill. 256).

**Defective sidewalk—board broken.** Lady stepped upon broken board in sidewalk and fell, breaking her right arm at the wrist—suffered great pain and could not act as nurse for ten months—permanent injury. Judgment \$1,000. Affirmed.

*City of Chicago v. Jones*, 66 Ill. 349.

**Defective sidewalk.** Plaintiff fell upon, injuring her arm causing muscles to gradually waste away. Judgment \$3,200. Affirmed.

*City of Ottawa v. Sweely*, 65 Ill. 434.

**Defective sidewalk.** Young lady stepped on end of loose plank which gave away and she fell into a vault beneath the sidewalk six feet below—back injured. Judgment \$3,500. Affirmed.

*City of Decatur v. Fisher*, 63 Ill. 241 (same case 53 Ill. 407).

**Defective sidewalk in front of burned building.** Plaintiff was a merchant whose building had been burned. The city constructed a temporary fence to prevent persons falling into

**excavations.** In seeking to cross the sidewalk, plaintiff fell and was injured. This was ten days after the fire. Judgment \$300. Reversed on ground city could not be held; not having had time in which to make repairs.

*City of Centralia v. Krowse*, 64 Ill. 19.

**Defective sidewalk.** Out of repair over a year. Walk icy. Plaintiff was walking over in night time. Plank sloped forty-five degrees. Plaintiff slipped and fell. Judgment \$1,500. Affirmed.

*City of Rockford v. Hildebrand*, 61 Ill. 155.

**Tunnel under Chicago river defective.** Ice accumulated on the foot path through the tunnel. Plaintiff fell upon and broke her leg. Judgment for plaintiff. Affirmed.

*City of Chicago v. Hislop*, 61 Ill. 86.

**Defective sidewalk.** Excavation under sidewalk by private owner with knowledge of city. Covered by loose boards. Plaintiff fell through the boards on a dark night. Shoulder broken. Judgment for plaintiff. Affirmed.

*City of Sterling v. Thomas*, 60 Ill. 264.

**Barrels and counter piled on sidewalk** fell over upon plaintiff walking along the sidewalk. He touched the counter, which was in tottering condition. Twelve years old. Leg fractured. Judgment \$50. Affirmed.

*Kerr v. Forgue*. 54 Ill. 482.

**Defective sidewalk.** Board loose—slipped from under plaintiff's foot, throwing her down. Judgment \$3,000. Reversed as excessive.

*City of Decatur v. Fisher*, 53 Ill. 407.

**Defendant excavated sidewalk vault without license.** Left same unguarded. Plaintiff fell into hole. Held defendant, the owner of the abutting premises was liable. If he had no license to excavate he was held liable, though he guard the excavation.

*Pfau v. Reynolds*, 53 Ill. 212.

**Defective sidewalk.** Woman walked off high sidewalk in the night time. No railing or lights. Fell on her head. Spine affected. Judgment \$4,750. Reversed as excessive, exemplary damages not being allowed in such a case.

*City of Chicago v. Langlass*, 52 Ill. 256.

**Defective sidewalk.** Allowed to become uneven and full of holes. Plaintiff fell on same in the night time. A plank covered a drain and connected with the sidewalk. Judgment \$2,250. Affirmed.

*City of Champaign v. Patterson*, 50 Ill. 61.

**Counter standing on sidewalk fell over killing child** six years old. Children playing on the counter. Parents allowed child to play near the counter. Judgment for plaintiff. Reversed on ground parents' negligence contributed to the accident.

*City of Chicago v. Starr*, 42 Ill. 174.

**Defective sidewalk—loose plank.** Plaintiff stumbled over and fell. Wrist dislocated; bone fractured. Judgment for plaintiff. Affirmed.

*City of Bloomington v. Bay*, 41 Ill. 503.

**Defective grating in sidewalk.** Plaintiff stepped on grating which gave way. Plaintiff fell through to area below. Owners built the walk. Action against owners. Premises in possession of tenant. Judgment \$3,500. Affirmed.

*Stephani v. Brown*, 40 Ill. 428.

**Defective sidewalk.** Sidewalk at the approach to bridge constructed without railing or guard. Board tipped, throwing plaintiff downstairs. Discussion of city's liability. Judgment for plaintiff. Affirmed.

*City of Joliet v. Verley*, 35 Ill. 58.

**Hole in sidewalk.** Plaintiff fell into in night time. No railing or protection; no light. Building being constructed by independent contractor. Plaintiff recovered \$1,000 against the

city of Chicago. This action is by city of Chicago against the owners of the premises to recover the judgment. Judgment for plaintiff. Reversed on ground owner not liable, the negligence being of contractor. First case as to independent contractors.

**Scammon v. City of Chicago**, 25 Ill. 361.

**Defective sidewalk.** Plaintiff fell upon and broke his leg. The only point discussed at length is the duty of cities to keep sidewalks in repair. This is the first case on the subject. Demurrer to declaration was sustained in the circuit court. The supreme court reversed, holding an action against the city would lie. Review of cases.

**Browning v. City of Springfield**, 17 Ill. 142.

**DEFECTIVE STREETS—CASES.**

DITCH, EXCAVATING, ETC.  
FELL INTO HOLE IN.  
MISCELLANEOUS DEFECTS.

**a. Ditches, Excavating, etc.**

**Defective street—wagon loaded with lumber** tipped on pile of dirt left in the street, throwing driver to ground. The lumber was chained to the wagon; plaintiff riding on top. Lumber fell upon plaintiff. Judgment \$6,000. Affirmed.

City of Chicago v. Bork, 227 Ill. 60.

**Beer barrel fell off wagon—struck traveler—street out of repair.** Plaintiff was driving beer wagon over excavated street. Had been over the street fifty times during the excavation. Wagon slipped throwing beer barrel upon plaintiff. Judgment \$2,758. Reversed for failure to show due care.

Village of Lockport v. Licht, 221 Ill. 35 (4-'06.)

**Unguarded ditch—buggy fell into it—leg broken.** Defendant dug a ditch in front of his property and left it unguarded at night. Plaintiff drove into it on a dark misty night. Leg broken in three places. Judgment \$1,200. Affirmed.

Nelson v. Fehd, 203 Ill. 120 (6-'03).

**Ditch in alley caved in on workman.** Excavation in public alley caved in on workman assisting excavation under immediate direction of superintendent of streets, but work was being done by contractor whose duty it was, by contract, to safeguard the ditch. No privity of contract between plaintiff and city. Judgment for defendant. Affirmed.

Foster, Admr., v. City of Chicago, 197 Ill. 264 (6-'02).

**Sewer ditch caved in on workmen.** The sides of a sewer being constructed caved in on plaintiff, who was working under immediate orders of superintendent of streets. Judgment \$2,500. Affirmed.

*City of La Salle v. Kostka*, 190 Ill. 131 (4-'01).

**Ditch in street—horse fell into.** Open and unprotected ditch five feet deep, three feet wide, in street. No light to warn travelers. Plaintiff's horse fell into ditch in night time. He was thrown to the ground. Judgment \$1,500. Affirmed. Right of travelers to rely on street being safe.

*City of Spring Valley v. Gavin*, 182 Ill. 232 (10-'99).

**Defective street—debris left after paving.** Plaintiff thrown from wagon. Judgment for plaintiff. Affirmed.

*City of Peoria v. Gerber*, 168 Ill. 318.

**Defective sewer inlet—pedestrian stepped into.** Fracture of left leg. In hospital one year. Judgment for plaintiff. Affirmed.

*City of Chicago v. Seben*, 165 Ill. 371.

**Defective street crossing. Open ditch.** Plaintiff fell into at night. Hid by weeds. Judgment \$2,250. Affirmed.

*City of Beardstown v. Smith*, 150 Ill. 169.

**Defective street—gravel pile left on.** No lights or guards to prevent running into. Wagon ran upon in night time and tipped over injuring driver. Electric light near the place. Judgment \$5,000. Affirmed.

*City of Aurora v. Rockabrand*, 149 Ill. 399.

**Defective street—excavation left unguarded.** Lady fell into and received injuries as a result of which she later died. Question was raised as to cause of death. Judgment \$2,000. Affirmed.

*City of Mt. Carmel v. Howell*, 137 Ill. 91.



**Defective street.** Street cleaning gang left ridge of dirt along center of street. It froze over night. Lady driving buggy on one side of ridge thrown out by wheel striking the ridge, the horse having shied at a wagon backing from the sidewalk. Judgment \$2,000. Affirmed.

*City of Champaign v. Jones*, 132 Ill. 304.

**Defective street. Fireman injured.** Hose cart ran into pile of stones in street, throwing fireman to ground. Nine o'clock at night. Judgment \$2,500. Affirmed.

*City of Chicago v. Sheehan*, 113 Ill. 658.

**Defective street on street car crossing.** Wagon passing over it was tipped by the roughness, and driver thrown out and injured. Track three to six inches above roadway. Judgment for defendant. Reversed because of harmful instruction on due care by plaintiff, and because so many instructions were given as to confuse the jury.

*Shatton v. Cent. City Horse Ry. Co.*, 95 Ill. 25.

#### **b. Fell Into Hole in.**

**Hole in street tipped wagon over.** Plaintiff was driving wagon along public street 7:30 P. M. on dark night. Wheel of wagon dropped into hole in street, tipped and threw plaintiff out. Two new ruptures developed. Judgment for defendant. Reversed in supreme court because of erroneous instructions as to due care.

*Herman Vocke v. City of Chicago*, 208 Ill. 192 (2-'04).

**Ditch across street—no lights—ran into.** City excavated ditch across street to drain water. No lights or guards. Plaintiff drove buggy into ditch and was thrown out. Judgment \$3,000. Affirmed.

*City of Salem v. Webster*, 192 Ill. 369 (10-'01).

**Sink holes in street—tipped wagon.** Sewers had been dug and filled again. Rain caused sink holes; leaving street very rough. Plaintiff knew condition of street. Was driving over it when jolt threw him from wagon. Judgment \$2,500. Affirmed.

*City of Aurora v. Scott*, 185 Ill. 539 (4'00).

### **c. Miscellaneous Defects.**

**Pedestrian fell over guy rope left over sidewalk.** Advertising banner was hung in street. The guy rope had been run to the side building and fastened about three feet above sidewalk. Plaintiff fell over the rope. Rope was so placed from 10 A. M. to 8:30 P. M. following day. Judgment \$3,000. Affirmed.

*City of Ottawa v. Hayne*, 214 Ill. 45 (2'05).

**Defective street.** Horses ran away and plaintiff was thrown out by the buggy striking a stone wall on the side of the street, over a viaduct. The street as constructed inclined toward the wall causing the wheels to slide as the horse pulled the buggy around a curve onto the viaduct. Negligence in constructing the street averred. Paralysis and total disability. Judgment \$5,000. Affirmed.

*City of Joliet v. Shufeldt*, 144 Ill. 403.

**Blasting in street.** Lady driving over street thrown out of buggy—horses frightened. Street in torn-up condition. Judgment for plaintiff. Affirmed.

*City of Joliet v. Seward*, 99 Ill. 267.

**Blasting stone in street.** Horse standing near curb frightened and ran away throwing plaintiff out. Judgment for plaintiff. Reversed and remanded because of instruction.

*City of Joliet v. Sewer*, 86 Ill. 402.

**Failure to provide safe hitching posts.** Horse tied to defective hitching post. Another runaway frightened the horse. Pulled over hitching post and ran over person in street. Judgment \$80. Reversed on the ground that negligence of the city was not the approximate cause of the injury.

*City of Rockford v. Tripp*, 83 Ill. 247.

**Defective street.** Dangerous obstruction in road—dirt from excavation—street covered with snow. Plaintiff drove wagon over pile of dirt—wagon upset—leg broken—ankle sprained. Judgment \$1,500. Affirmed.

City of Chicago v. Brophy, 79 Ill. 277.

**Defective street.** Rock, dirt and rubbish accumulated in street—plaintiff riding along street thrown out and injured. Plaintiff's husband was driving and was intoxicated. Judgment \$3,600. Reversed for refusal of motion for a new trial.

City of Rock Island v. Van Landschoot, 78 Ill. 485.

**Dead animal left in street.** From 2 P. M. one day until 3 P. M. next day. Plaintiff's horse became frightened and ran away throwing him out. Judgment \$800. Affirmed.

City of Chicago v. Hoy, 75 Ill. 530.

**Obstruction in public street.** A pile of brick placed in street by contractor in violation of city ordinance. On opposite side a pile of lumber. While two wagons were attempting to pass through the space between the lumber and bricks the tongue of one wagon struck a boy riding in the other wagon injuring him so that he died. Action against the contractor. Judgment \$2,000. Affirmed.

Welck v. Lander, Admr., 75 Ill. 93.

**Excavation in street dug by private owner without knowledge of city.** Left unguarded. Plaintiff fell into the hole in the night time. The city was sued and settled for \$300. The city then sued the private owner to recover amount of settlement. Demurrer to narration sustained on ground the city was not liable in the first instance. Affirmed.

Fahey v. Town of Harvard, 62 Ill. 28.

**Defective street.** Plaintiff's horse ran away and in passing over defective crosswalk he was thrown out. Action against city. Judgment \$30. Affirmed.

City of Centralia v. Scott, 59 Ill. 129.

**Obstruction in street.** Private person strung a rope across a much used street. It remained there two days. Plaintiff was thrown from her buggy by running into the rope. Judgment \$4,000. Affirmed.

City of Chicago v. Fowler, 60 Ill. 322.

**Fence across street** erected by owner. Plaintiff attempted to climb over the fence; fell and was injured. Judgment for plaintiff. Reversed, no negligence shown.

City of Aurora v. Pulfer, 56 Ill. 270.

**Excavation in street unguarded.** No lights. Plaintiff drove into in night time. Judgment \$1,000. Affirmed.

City of Chicago v. Johnson, 53 Ill. 91.

**Plaintiff fell into sewer in street** being excavated. Sewer being constructed by contractor. Judgment \$2,000. Affirmed.

City of Springfield v. Le Claire, 49 Ill. 476.

**Defective street.** Culvert left out of repair in street in outskirts of city. Lady fell and was injured. Judgment \$1,000. Reversed because of instruction allowing exemplary damages.

City of Chicago v. Martin, 49 Ill. 241.

**Defective drain in street.** Horses ran away. One wheel of wagon fell into defective drain; wagon tipped, throwing driver to ground. Judgment for plaintiff. Affirmed.

Marshall v. C. & G. E. R. R. Co., 48 Ill. 476.

**Defective street.** Catch basin out of repair. Water did not run off. Ice accumulated. Plaintiff fell while attempting to cross. Judgment \$1,300. Affirmed although not satisfactory to supreme court.

City of Chicago v. Smith, 48 Ill. 107.

**Child fell into water tank and drowned.** Owned by city: action by father—good. Judgment \$800. Affirmed.

City of Chicago v. Major, 18 Ill. 349.

**DEFECTIVE BRIDGE.**

**Defective bridge over river in city fell injuring plaintiff while crossing. No further facts. Judgment for plaintiff. Affirmed.**

**Village of Marseilles v. Howland, 124 Ill. 547.**

**Decayed boards on sidewalk of bridge. Plaintiff fell through and was permanently injured. Case was twice in supreme court. Judgment \$15,000. Reversed. Judgment \$20,000. Affirmed.**

**City of Elgin v. Noffs, 200 Ill. 252.**

**City of Elgin v. Noffs, 212 Ill. 20.**

**Defective bridge in city. Driving horse and buggy over. Horse stepped in hole. Plaintiff thrown to ground. Right arm dislocated at elbow; permanent disability. Judgment \$3,500. Affirmed.**

**City of La Salle v. Porterfield, 138 Ill. 114.**

**Defective bridge. In frequented part of village, had no rail on either side, plaintiff fell off in night time—had knowledge of the condition of the bridge. Judgment for plaintiff. Reversed because of instruction on negligence.**

**Town of Grayville v. Whitaker, 85 Ill. 439.**

**Defective bridge. Plaintiff driving over bridge—load of straw—wagon upset owing to rotten board and he fell to the ice below—deficient railings. Thigh bone broken. Judgment for plaintiff \$4,500. Reversed because of erroneous instruction on exercise of due care.**

**Sterling Bridge Co. v. Pearl, 80 Ill. 251.**

**Defective railroad bridge. Engine ran off of or broke through owing to rotten timbers. Engineer killed. Conflict as to how the accident occurred. Judgment \$1,500. Affirmed.**

**T. P. & W. Ry. Co. v. Conroy, 68 Ill. 560.**

**Defective railroad bridge.** Engine fell through. Fireman killed. Actual notice not shown. Judgment for plaintiff. Reversed because of instruction ignoring notice to defendant.

*T. P. & W. Ry. Co. v. Conroy*, 61 Ill. 162.

**Defective bridge.** Plaintiff fell through an uncovered bridge while attempting to board train. (Elgin.) Judgment \$25,000. Reversed as excessive.

*C. & N. W. Ry. Co. v. Fillmore*, 57 Ill. 265.

**Defective bridge.** Bridge improperly built—deceased stepped off approach as bridge was being turned, and fell into the river. Dark night. Mother and minor brother next of kin. Judgment for plaintiff. Affirmed.

*City of Chicago v. Powers, Admx.*, 42 Ill. 169.

**Bridge fell while train crossing.** Employee of railroad company injured. Sued as passenger and as work-hand. Was not doing service at time of injury. Judgment \$1,500. Affirmed.

*Ohio & M. Ry. Co. v. Muhling*, 30 Ill. 9.

**Defective toll bridge.** Team fell through; driver injured. Horses frightened by engine; backed off—no railing. Judgment for plaintiff. Reversed because of contributory negligence of plaintiff.

*Peoria Bridge Ass'n v. Loomis*, 20 Ill. 236.

**Defective country bridge.** County not liable for injury. Owning to weakness of plank unsupported, horse fell through. County not liable. Agent could be held if negligent. Demurrer to narr. sustained. Affirmed.

*Hedges v. County of Madison*, 1 Gil. 566.

**DRAM SHOP CASES.**

**Action by wife—husband shot in a quarrel.** Wife sued saloon-keeper under the Dram Shop Act for death of her husband, shot by one with whom he was quarreling, both being drunk. Deceased struck his slayer first. Judgment \$1,000. Affirmed.

*Baker & Reddick v. Emma Summers*, 201 Ill. 52 (2-'03).

**Action by wife—husband shot in quarrel.** Suit by wife under Dram Shop Act. Husband shot in a saloon quarrel by a man who became intoxicated in the saloon. Saloon-keeper and owner sued jointly. Judgment \$3,000. Affirmed.

*Sauter et al. v. Carrie Anderson*, 199 Ill. 319 (10-'02).

**Action by wife—husband fell off wagon.** Dram Shop Act. Intoxicated man fell off wagon and was killed. Judgment \$3,000. Affirmed.

*Sharb v. Webber*, 188 Ill. 126 (12-'00).

**Action against sureties on saloonist's bond—after judgment.** Dram Shop Act. Suit against sureties on saloon-keeper's bond, after judgment against principal and failure to pay. Judgment for plaintiff. Affirmed.

*Wanack v. People*, 187 Ill. 116 (10-'00).

**Intoxicated husband killed while crossing track.** Judgment \$1,550. Affirmed. Evidence of deceased's character held competent. Pleading—recovery for partial loss of support may be had under an averment of total loss.

*Buck v. Maddock*, 167 Ill. 219.

**Who is owner of building under Dram Shop Act.** Question considered.

*Bell v. Cassem*, 158 Ill. 45.

**Making husband an habitual drunkard actionable.** Injury to means of support because of. Judgment \$1,000. Affirmed. Evidence that saloonist refused to sell to husband incompetent. Damages—exemplary are allowed where saloonist was warned not to sell.

*Wolfe v. Johnson*, 152 Ill. 280.

**Making husband habitual drunkard.** Injury to means of support. Judgment \$1,200. Affirmed. Evidence—what improper in dram shop case.

*Hanewacker v. Ferman*, 152 Ill. 321.

**Intoxicated husband went on river in boat.** Fell out and was drowned. Action brought by wife and children against saloonist and owner. Judgment \$1,500 to widow and \$700 to each of the children. Affirmed. Seller and owner of building jointly liable. Joint action by widow and children proper.

*Hellmuth v. Bell*, 150 Ill. 263.

**Injury to means of support—Dram Shop Act.** Defendant caused habitual drunkenness of plaintiff's husband. During five years he wasted his property until she had to support him—had warned defendant not to sell to husband. Judgment \$1,750. Affirmed. Evidence of warning to saloon-keepers—good. Sales after warning—willful. Causing habitual drunkenness—evidence of.

*Siegle v. Rush*, 173 Ill. 559.

**Dram Shop Act.** Action by widow for death of husband who was run down by a railway train while intoxicated. Was last seen alive on track going towards his home. Judgment for plaintiff. Affirmed. Measure of damages to wife. Exemplary damages—when allowed.

*Betting et al. v. Hobbart*, 142 Ill. 72.

**Dram Shop Act.** Injury to means of support. Team driven by deceased while intoxicated ran away throwing him out and causing his death. Was an habitual drunkard. Judgment



\$1,000. Affirmed. Evidence of habitual drunkenness—when good. “Selling” and “giving” are separate causes of action. Intoxication does not mean excited to frenzy. Contributory negligence immaterial when due to the intoxication.

Smith v. The People, 141 Ill. 447.

**Dram Shop Act.** Selling to intoxicated person. Suit by wife for death of husband. Judgment \$1,800. Affirmed.

Kennedy Bros. v. Sullivan, 136 Ill. 94.

**Dram Shop Act.** Injury to means of support because of death of husband and father due to intoxication. Struck by street car. Judgment for plaintiff. Affirmed.

McMahon v. Sankey, 133 Ill. 637.

**Dram Shop Act.** Husband thrown from his horse while intoxicated, and killed. Suit by wife. Deceased left farm and other property. Defendant was not a saloon-keeper, but gave the deceased two drinks. Judgment \$800. Reversed in appellate court on ground that defendant not being engaged in the sale of intoxicants for profit and could not be held for damages. Affirmed by supreme court.

Cruse v. Allen, 127 Ill. 231.

**Dram Shop Act.** Suit by wife. Injury to means of support by death of husband. Judgment for plaintiff. Affirmed.

Mayers v. Smith, 121 Ill. 442.

**Dram Shop Act.** Husband of plaintiff was killed while intoxicated. Fell between cars while attempting to get off train at station. Left widow and eleven children. Judgment \$1,800. Reversed because of evidence as to expenses incurred by wife after husband's death in improving farm, and immaterial evidence.

Flynn v. Fogarty, 106 Ill. 263.

**Dram Shop Act.** Injury to means to support. Acts of 1872 and 1874. Saloon-keeper had been warned not to sell. Selling to one habituated to intoxicants. Judgment \$370. Affirmed.

Reed v. Thompson, 88 Ill. 245.

**Dram Shop Act.** Action for loss of support because of making husband an habitual drunkard. Change of venue from circuit to city court. Judgment \$1,000. Affirmed.

*Lowry v. Coster*, 91 Ill. 182.

**Dram Shop Act.** Husband of plaintiff fell into river and was drowned while intoxicated. Judgment \$3,000. Affirmed.

*Meyer v. Butterbrodt*, 146 Ill. 131.

**Dram Shop Act.** Person made intoxicated by defendant shot plaintiff with a pistol. Action begun by the person who was shot to recover for the injury. Demurrer to the declaration sustained. Reversed in the supreme court because of an instruction as to intoxication. Declaration held good.

*King v. Haley*, 86 Ill. 106.

**Dram shop case.** Action on bond. Exemplary damage cannot be recovered in such case. Judgment for plaintiff. Reversed because of exemplary damages given.

*Cobb v. The People*, 84 Ill. 511.

**Dram shop case.** Action by wife. The husband became intoxicated and while quarreling with another man was shot, from which injury he died. Judgment for plaintiff. Reversed on the ground that the intoxication was not shown to be the cause of death.

*Schmidt v. Mitchell*, 84 Ill. 195.

**Dram shop case—injury to support.** Action by wife—destroying husband's capacity to work. Judgment for plaintiff. Reversed because of instruction.

*Ludwig v. Sager*, 84 Ill. 99.

**Dram shop case.** Husband became intoxicated—used abusive language towards third person, who assaulted and killed him. Action by wife. Judgment for plaintiff. Reversed on the ground that the liquor seller could not have foreseen such consequence as the result of his selling.

*Shugart v. Egan*, 83 Ill. 56.

**Dram shop case.** Action by wife for making husband habitual drunkard. Injury to means of support. Judgment \$300. Affirmed.

Paul v. Barnes, 82 Ill. 228.

**Dram shop case.** Action by wife for making habitual drunkard of her husband. Judgment \$300. Affirmed.

Brannon v. Silvernail, 81 Ill. 434.

**Dram shop case.** Action by wife for causing the intoxication of her husband—fell—no serious injury—reasonably well off. Judgment \$1,100. Reversed because of evidence as to financial condition of husband.

McCann v. Roach, 81 Ill. 213.

**Dram shop case.** Action by wife against grocery keeper for selling liquor to her husband. Had given notice not to sell husband—arrested and put in jail while intoxicated. Judgment \$200. Affirmed.

McEvoy v. Humphrey, 77 Ill. 388.

Exemplary damage—proper in dram shop case.

McEvoy v. Humphrey, 77 Ill. 388

**Dram shop case.** Action by wife for death of husband while intoxicated—notice to liquor seller. Deceased went to bed with a jug of liquor which was nearly empty in the morning. He died soon after. Wife could have taken the jug away from him. Judgment \$1,000. Reversed on the ground that plaintiff was negligent in not taking the jug of liquor from her husband as she could have done.

Reget v. Bell, 77 Ill. 593.

**Dram shop case.** Action by wife for injuries to means of support for selling liquor to husband. Wife compelled to mortgage her property. Judgment \$550. Affirmed.

Horn v. Smith, 77 Ill. 381.

**Dram shop case.** Action by wife for death of husband. Thrown out of buggy and drowned while attempting to cross

stream of water. Judgment \$2,800. Reversed because of evidence of damage other than alleged. Discussion of the law under the Dram Shop Act. Liability of owner of building jointly with the liquor seller.

*Hackett v. Smelsley*, 77 Ill. 110.

**Dram shop case.** Intoxicated person fell in the street and broke his leg—plaintiff took care of him and brought suit against liquor seller for compensation for such care. Judgment \$248. Reversed because of evidence as to amount expended by plaintiff. Statute allows fixed sum.

*Brannan v. Adams*, 76 Ill. 331.

**Dram shop case.** Action by wife for injury. Judgment \$200. Reversed because no damage shown.

*Brantigan v. While*, 73 Ill. 561.

*Keedy v. Howe*, 72 Ill. 133.

**Dram shop case.** Husband became intoxicated and choked his wife, neglected his business and abandoned her. Judgment \$2,000. Reversed because of erroneous instruction on exemplary damages and for refusal of challenge of juror for cause.

*Albrecht v. Walker*, 73 Ill. 69

**Dram shop case.** Action by wife against liquor seller for selling to her husband. Judgment \$500. Reversed because no actual damage shown.

*Fentz v. Meadows*, 72 Ill. 540.

**Dram shop case.** Action by wife, selling liquor to husband causing intoxication. Judgment \$1,000. Reversed because of instruction on damages.

*Confrey v. Stark*, 73 Ill. 137.

**Dram shop case.** Action by wife for injury to her support. Husband's leg fractured. Judgment for plaintiff. Reversed on ground that no damage to wife shown.

*Medel v. Anthls*, 71 Ill. 242.

**Dram shop case.** Action by wife to means of support—making habitual drunkard of husband. Judgment \$1,200. Affirmed.

**Roth v. Eppy**, 80 Ill. 283.

**Dram shop case.** Action by wife for death of husband while intoxicated—struck by a railroad train. Judgment for plaintiff. Affirmed.

**Emory v. Addis**, 71 Ill. 273.

**Dram shop case.** Action by wife for injury to means of support—husband made habitual drunkard and useless to family. Judgment \$1,500. Reversed because of excessive damages, it appearing the husband had never supported his family.

**Kellerman v. Arnold**, 71 Ill. 632 (71 Ill. 241 distinguished).

**Dram shop case.** Action by wife for selling intoxicating liquor to husband. Judgment for plaintiff. Reversed. No proof of damage. Dram Shop Act of 1872 construed.

**Freese v. Tripp**, 70 Ill. 496.

#### **Law—rules of under Dram Shop Act.**

What wife must prove when husband is killed.

**Baker & Reddick v. Summers**, 201 Ill. 52.

Evidence of gambling before injury—incompetent.

**Baker & Reddick v. Summers**, 201 Ill. 52.

Action against saloon-keeper and owner of building by wife for husband's death.

**Sauter v. Anderson**, 199 Ill. 319.

Evidence of physician as to how death might have been caused—competent.

**Sharb v. Webber**, 188 Ill. 126.

Intoxication must be the proximate cause of death.

**Sharb v. Webber**, 188 Ill. 126.

Instruction that intoxication must be shown, approved.

**Sharb v. Webber**, 188 Ill. 126.

Exemplary damages are allowed.

Wanack v. People, 187 Ill. 116.

Action against sureties on bond after judgment and failure to pay.

Wanack v. People, 187 Ill. 116.

Injury to means of support—making husband habitual drunkard.

Siegle v. Rush, 173 Ill. 559.

Sales after warning are wilful.

Siegle v. Rush, 173 Ill. 559.

Causing habitual drunkenness—what is.

Siegle v. Rush, 173 Ill. 559.

Evidence of character of deceased—good.

Buck v. Maddock, 167 Ill. 219.

Intoxicated person killed by train—recovery against saloon-keeper.

Buck v. Maddock, 167 Ill. 219.

Pleading—total loss of support—recovery for partial loss of—allowed under.

Buck v. Maddock, 167 Ill. 219.

Who is owner of building—under statute.

Bell v. Cassem, 158 Ill. 45.

Section 9 of the Dram Shop Act gives a person injured by intoxicated person action against saloon-keeper.

King v. Haley, 86 Ill. 106.

Liquor seller not responsible where careless treatment is responsible for death.

Schmidt v. Mitchell, 84 Ill. 195.

Rule as to when liquor seller is liable for injury caused by intoxication.

Shugart v. Egan, 83 Ill. 56.

Preponderance of evidence only is required in dram shop case.

Paul v. Barnes, 82 Ill. 228.

Evidence that husband and wife drank together is proper to mitigate damages.

Roth v. Eppy, 80 Ill. 288.

Circumstantial evidence good in dram shop case.

Horn v. Smith, 77 Ill. 381.

Action against liquor seller for selling to one in the habit of getting drunk—proper.

Horn v. Smith, 77 Ill. 381.

Where wife knows her husband is drinking and could prevent his excessive intoxication but does not do so she cannot recover.

Reget v. Bell, 77 Ill. 593.

A person caring for an intoxicated person injured may recover for such care against the liquor seller.

Brannan v. Adams, 76 Ill. 331.

Exemplary damage not allowed in dram shop case until actual damage shown.

Fentz v. Meadows, 72 Ill. 540.

Brantigan v. White, 73 Ill. 561.

Keedy v. Howe, 72 Ill. 133.

Dram Shop Act should be strictly construed.

Fentz v. Meadows, 72 Ill. 540.

Evidence that liquor seller had ordered clerk not to sell—proper in mitigation of damages.

Fentz v. Meadows, 72 Ill. 540.

In dram shop case all parties who sold liquor to deceased may be jointly or severally sued.

Emory v. Addis, 71 Ill. 273.

**DUE DILIGENCE BY MASTER, ETC.**

(See also DUTY TO GUARD AGAINST INJURY (g) .)

Failure of defendant to inspect electric wires—held to be want of.

Postal Telegraph Cable Co. v. Likes, 225 Ill. 249.

What is—by street car company, as to care of passengers—question of fact.

C. C. Ry. Co. v. Shreve, 226 Ill. 530.

By master—what is.

Metcalf v. Nystedt, 203 Ill. 333.

Failure of master to exercise—shown.

Armour v. Golkowska, 202 Ill. 144.

In seeking to find witness—what is.

P. C. C. & St. L. R. R. Co. v. Robson, 204 Ill. 254.

Springer v. Schultz, 205 Ill. 144.

Time and manner of making inspection as showing—competent.

I. C. R. R. Co. v. Prickett, 210 Ill. 140.

In running street car over crossing—what is.

C. C. Ry. Co. v. Fennimore, 199 Ill. 9.

By gripman in running street car is question of fact for jury.

C. C. Ry. v. Sandusky, 198 Ill. 400.

By one seeking to have judgment set aside.

Staunton Coal Co. v. Menk, Admx., 197 Ill. 369.

By master in providing safe place to work—rule as to.

Western Stone Co. v. Muscial, 196 Ill. 382.

Want of in failing to keep machinery in safe condition—shown.

Ill. Steel Co. v. Ostrowsky, 194 Ill. 376.



Not shown as a matter of law where gripman told passenger to move without explaining the danger to be avoided.

W. C. St. Ry. Co. v. Johnson, 180 Ill. 285.

Of railroad company at crossing to prevent injury—not shown.

I. C. R. R. Co. v. Larson, 152 Ill. 326.

Public may rely on exercise of by railroad company at crossings.

C. & A. R. R. Co. v. Adler, 129 Ill. 335.

Exercise of reasonable care by city as to sidewalk is sufficient.

Village of Mansfield v. Moore, 124 Ill. 133.

By carrier in care of passengers—what is.

C. & A. R. R. Co. v. Pillsbury, 123 Ill. 11.

In transporting scab workmen on passenger train—what is not.

C. & A. R. R. Co. v. Pillsbury, 123 Ill. 11.

At a place of special danger—higher care required.

C. & A. R. R. Co. v. Dillon, 123 Ill. 571.

By railroad company at crossing.

W. St. L. & P. Ry. Co. v. Wallace, 110 Ill. 114.

Securing new evidence—not shown.

Union Rolling Mill Co. v. Gillen, 100 Ill. 52.

Equity has no jurisdiction of damage case against receiver—procedure in such case.

Brown v. Wabash Ry. Co., 96 Ill. 297.

Counties cannot be sued for personal injury due to negligence of county servant.

Hollenbeck v. Winnebago Co., 95 Ill. 148.

Diligence required by railroad company in providing safe machinery and engines.

C. C. & I. C. Ry. Co. v. Troesch, 68 Ill. 545.

Due diligence in discovering defect—rule.

Korah v. City of Ottawa, 31 Ill. 121.

**DUTY TO GUARD AGAINST INJURY.**

IN GENERAL, p. 143.

AS TO MINOR SERVANTS, p. 144.

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**a. In General.**

Not where servant employs a dangerous method of work, unknown to master.

*Karr Supply Co. v. Kroenig*, 167 Ill. 560.

Of master where he assumes a duty toward servant not imposed by the service—must use same care as in duty imposed by law.

*Consolidated Coal Co. v. Schreiber*, 167 Ill. 539.

Of master—from injury from machine defectively set up by manufacturer on his premises—not shown—manufacturer liable.

*Empire Laundry Co. v. Brady*, 164 Ill. 59.

Master not held as an insurer of safety.

I. B. & W. Ry. Co. v. Toy, 91 Ill. 474.

Not as to danger incident to the service.

C., R. I. & P. Ry. Co. v. Clark, 108 Ill. 114.

**b. As to Minor Servants**

(See also NEGLIGENCE.)

Of master as to injury to minor.

Hinckley v. Horazdowsky, 133 Ill. 359.

**c. As to Inspection.**

See also INSPECTION.)

Of defendant to inspect—shown.

C. & A. R. R. Co. v. Walters, 217 Ill. 87.

Armour v. Brazeau, 191 Ill. 117.

Failure to inspect—shown.

Momence Stone Co. v. Turrell, 205 Ill. 515.

**d. To Furnish Safe Tools, Machinery and Appliances.**

(See also MASTER AND SERVANT CASES.)

Of master to furnish safe tools and appliances; scaffolding fell.

Armour v. Brazeau, 191 Ill. 117.

Of master to furnish safe tools is implied from the contract of employment.

Chicago D. F. & F. Co. v. VanDam, 149 Ill. 337.

To provide safe machinery.

C. & A. R. R. Co. v. Bragonier, 119 Ill. 51.

Of master to furnish reasonably safe appliances.

C., R. I. & P. Ry. Co. v. Lonergan, 118 Ill. 41.

Of master to provide safe machinery.

Missouri Furnace Co. v. Abend, 107 Ill. 45.

I. & St. L. R. R. Co. v. Estes, 96 Ill. 470.

Of master to provide safe machinery.

Richard v. Cooper, 88 Ill. 270.

Care required by railroad company in furnishing safe appliances—rule of assumed risk by brakeman of defective car.

T. W. & W. Ry. Co. v. Ashbury, 84 Ill. 430.

Held the duty of servant to see that the machinery he uses is in repair (this rule is now obsolete).

T. W. & W. Ry. Co. v. Eddy, 72 Ill. 138.

Care required by master in providing safe machinery—ordinary diligence only.

Camp Point Mfg. Co. v. Ballou, 71 Ill. 417.

Care required by master in providing competent servants.

C. C. & I. C. Ry. Co. v. Troesch, 68 Ill. 545.

Duty of railroad company to provide safe cars—shown.

C. & N. W. Ry. Co. v. Jackson, 55 Ill. 492.

It is brakeman's duty to see that brakes are in safe condition.

I. C. R. R. Co. v. Jewell, 46 Ill. 99.

#### **e. As to Duty to Warn and Instruct.**

To warn of unusual danger from a live wire—shown—rule as to—wire in unusual place.

Postal Tel. Cable Co. v. Likes, 225 Ill. 249.

Master is relieved of duty to warn servant of danger, where the servant's opportunity of knowing it is as good as his.

Postal Tel. Cable Co. v. Likes, 225 Ill. 249.

To warn of danger when work is dangerous.

Hansell-Elcock F. Co. v. Clark, 214 Ill. 399.

Failure to warn of danger—shown.

Momence Stone Co. v. Turrell, 205 Ill. 515.

Of master to warn servant of danger of which master has notice—shown.

Kewanee Boller Co. v. Erickson, 181 Ill. 549.

Of master to warn servant of misplaced guards on machine—shown.

Swift & Co. v. Fue, 167 Ill. 443.

Of master where a peculiar and unusual hazard exists.

I. C. R. R. Co. v. Gilbert, 157 Ill. 354.

Of master to instruct inexperienced servant as to dangers of employment—shown.

Harris v. Shebek, 151 Ill. 287.

To warn servant of unsafe condition of track—shown.

Consolidated Coal Co. v. Haenni, 146 Ill. 614.

C. & A. R. R. Co. v. Kerr, 148 Ill. 605.

Of master to instruct inexperienced servant—shown.

Herdman-Harrison M. Co. v. Spehr, 145 Ill. 329.

Chicago Anderson Pressed Brick Co. v. Reinneiger, 140 Ill. 334.

Of master to instruct inexperienced servant.

Consolidated Coal Co. v. Wombacher, 134 Ill. 64.

Of master to warn of latent danger.

U. S. Rolling Stock Co. v. Wilder, 116 Ill. 100.

Duty of master to warn servant of defective mine cage—shown.

Perry v. Ricketts, 55 Ill. 234.

### **f. To Provide Safe Premises for Servants.**

(See also **SAFE PLACE TO WORK.**)

Failure to provide safe place to work—shown.

Momence Stone Co. v. Turrell, 205 Ill. 515.

To provide safe place to work is a positive obligation of the master—cannot be delegated.

Nimrod Coal Co. v. Clark, 197 Ill. 514.

Spring Valley Coal Co. v. Rowatt, 196 Ill. 156.

Of master is to *see* that premises are safe.

McBeath v. Rawle, Admx., 192 Ill. 626.

Of master as to premises—general rule of.

Brown, Admr., v. Siegel, Cooper & Co., 191 Ill. 226.

Of master to provide safe place—scope of rule as to.

N. C. St. Ry. Co. v. Dudgeon, 184 Ill. 477.

Care required of master in providing for safety of employes.

Hines Lumber Co. v. Ligas, 172 Ill. 315.

By master to provide safe premises cannot be delegated.

C. & A. R. R. Co. v. Scanlan, 170 Ill. 106.

C. & A. R. R. Co. v. Maroney, 170 Ill. 521.

Of master to provide safe place cannot be delegated.

Norton v. Volzke, 158 Ill. 403.

To provide safe place cannot be delegated.

Libby M. & L. v. Scherman, 146 Ill. 541.

To provide reasonably safe machinery.

Weber Wagon Co. v. Kehl, 139 Ill. 644.

### **g. To Exercise Due Diligence.**

(See also DUE DILIGENCE.)

Duty of master and foreman to use due diligence in giving orders—shown.

Republic Iron & S. Co. v. Lee, 227 Ill. 246.

Of master to use due diligence to provide safe appliances—shown.

Leonard v. Kinnare, 174 Ill. 532.

In caring for his servant—to use due diligence—rule.

Karr Supply Co. v. Kroenig, 167 Ill. 560.

### **h. As to Streets.**

(See also DEFECTIVE STREETS.)

Of city to see that electric wires in street are safe, held shown.

Village of Palestine v. Siler, Admr., 225 Ill. 630.

Of city to keep streets in good repair—rule.

Village of Palestine v. Siler, Admr., 225 Ill. 630.

Of city to remove debris from street after paving—shown.

City of Peoria v. Gerber, 168 Ill. 318.

Of city officers to inspect streets—shown.

City of La Salle v. Porterfield, 138 Ill. 114.

Of city to look after street—question of facts.

City of Champaign v. Jones, 132 Ill. 304.

Of city to guard against injury from street excavations.

City of Joliet v. Seward, 99 Ill. 267.

Duty of city to keep its streets well lighted.

City of Freeport v. Isbell, 83 Ill. 440.

Duty of city to keep its streets free from obstructions—held shown—improvements made in streets—presumption—made by city.

City of Chicago v. Brophy, 79 Ill. 277.

Duty of city to keep street free from obstructions that might frighten horses—shown.

City of Chicago v. Hoy, 75 Ill. 530.

Duty of city to keep streets open—when.

City of Aurora v. Pulfer, 56 Ill. 270.

Duty of city to guard streets being excavated.

City of Chicago v. Johnson, 53 Ill. 91.

Duty of city to keep streets safe—rule.

City of Springfield v. Le Claire, 49 Ill. 476.

### **i. As to Bridges.**

Of city to keep bridges in repair—shown.

Village of Marseilles v. Howland, 124 Ill. 547.

Of city to keep bridges safe for travel.

Gavin v. City of Chicago, 97 Ill. 66.

Of city—not to keep bridge safe for children to play on.

Gavin v. City of Chicago, 97 Ill. 66.

Duty of city to keep bridges lighted—shown.

City of Chicago v. Powers, Admx., 42 Ill. 169.

### **j. As to Sewers.**

Of city to keep sewer inlet in repair shown—liable.

City of Chicago v. Seben, 165 Ill. 371.

### **k. As to Premises Not Publicly Used.**

Of city to keep premises owned by it safe—child drowned in pit full of water.

City of Pekin v. McMahon, 154 Ill. 141.

### **l. As to Sidewalks.**

(See also DEFECTIVE SIDEWALKS CASES.)

Of city to keep sidewalk safe at night.

City of Evanston v. Richards, 224 Ill. 444.

Of city to erect fences and guards on sidewalks used by public.

City of Chicago v. Baker, 195 Ill. 54.

Of city to build guard rail on sidewalk on private property but so connected with public walk as to be part of it, held shown.

City of Chicago v. Baker, 195 Ill. 54.

Of cities in the care of sidewalks—safe being hoisted fell through—no recovery.

Kohlhof v. City of Chicago, 192 Ill. 249.

Of city to keep sidewalk in repair—reasonable care required.

City of Rock Island v. Starkey, 189 Ill. 515.



Of city to provide safe sidewalks does not arise where a loose plank had been placed over a hole by some person unknown, and plaintiff fell while attempting to cross.

Hogan v. City of Chicago, 168 Ill. 551.

Of city to keep crosswalks in safe condition—shown.

City of Beardstown v. Smith, 150 Ill. 169.

Of city as to sidewalks.

City of Flora v. Nancy, 136 Ill. 45.

Of city as to defective sidewalk.

Village of Jefferson v. Chapman, 127 Ill. 439.

Of city as to sidewalk on private ground but used by public.

Village of Mansfield v. Moore, 124 Ill. 133.

Of city to keep sidewalk safe for children to play on—held shown.

City of Chicago v. Keefe, 114 Ill. 222.

Care required by city in constructing sidewalk.

City of Chicago v. Bixby, 84 Ill. 82.

Care required by person walking over sidewalk.

Village of Kewanee v. Depew, 80 Ill. 119.

Duty of city to exercise reasonable care in constructing sidewalk.

City of Chicago v. McGiven, 78 Ill. 347.

When city is not liable for failure to repair sidewalk destroyed by fire.

City of Centralia v. Krowse, 64 Ill. 19.

Duty of city to keep sidewalks safe.

City of Champaign v. Patterson, 50 Ill. 61.

Duty of city is to care for sidewalks, though built by private owner.

City of Bloomington v. Bay, 41 Ill. 503.

Duty to keep sidewalk safe is on the owner and city.

Stephani v. Brown, 40 Ill. 428.

Duty of cities as to sidewalks, bridges, etc.

City of Joliet v. Verley, 35 Ill. 58.

**m. Street Railway Companies.**(See **STREET RAILWAY ACCIDENTS.**)

Of conductor of street car to know whether passenger has safely alighted, before starting car.

W. C. St. Ry. Co. v. McCafferty, 220 Ill. 476.

Of motorman in sudden danger—wagon turning on to track.

C. U. T. Co. v. Browdy, 206 Ill. 615.

Street car company is under no duty to slacken the speed of cars while they are passing each other between crossings.

Ackerstadt v. C. C. Ry. Co., 194 Ill. 616.

Of street car company when cars are approaching crossings; care required.

W. C. St. Ry. Co. v. Petters, 196 Ill. 298.

Of motorman not to run down wagon on track.

Chicago General Ry. Co. v. Carwell, 189 Ill. 515.

Of street car company to use care when it has notice of custom of passengers to board car at unusual place.

N. C. St. Ry. Co. v. Kaspers, 186 Ill. 246.

Of gripman to look out for people crossing street—may presume child will not suddenly run in front of car.

Rack v. C. C. Ry. Co., 173 Ill. 289.

Of street car company toward child in danger.

C. W. D. Ry. Co. v. Ryan, 131 Ill. 474.

Of street car company is to use more care at street crossing.

C. C. Ry. Co. v. Jennings, 157 Ill. 274.

Of street car company to allow time for alighting.

C. W. D. Ry. Co. v. Mills, 105 Ill. 53.

C. C. Ry. Co. v. Mumford, 97 Ill. 560.

Of conductor—his duty is to know when passenger has safely alighted before starting car.

N. C. St. Ry. Co. v. Cook, 145 Ill. 551.

**n. By Railroad Companies.****In general.**

Of railroad company to keep vestibule closed—held not shown.

Ward v. C. & N. W. Ry. Co., 165 Ill. 462.

Of railroad company to provide for safety of its servants—rule.

C. & A. R. R. Co. v. Kerr, 148 Ill. 605.

To provide safe premises—bridge built too low.

C. & A. R. R. Co. v. Johnson, 116 Ill. 206.

Of railroad company to guard against injury in yards.

Rolling Mill Co. v. Johnson, 114 Ill. 59.

Not shown neglected—explosion of locomotive.

I. B. & W. Ry. Co. v. Toy, 91 Ill. 474.

**As to tracks—keeping safe.**

Of railroad company to ballast tracks within usual switching yards—held shown.

L. E. & W. R. R. Co. v. Morrissey, 177 Ill. 376.

Of railroad company to keep tracks safe—uneven rails.

C. & A. R. R. Co. v. Kerr, 148 Ill. 605.

Of a leasing railroad is to see that leased tracks are not defective—liable for injury. All companies using tracks are under same duty.

Wisconsin Central Ry. Co. v. Ross, 142 Ill. 9.

It is the duty of railroad company to keep its platforms in safe repair.

T. W. & W. Ry. Co. v. Grush, 67 Ill. 262.

Care required by railroad company in constructing depot platform—negligence held shown.

C. & A. R. R. Co. v. Wilson, 63 Ill. 167.

**Toward passengers.**

(See also PASSENGERS.)

Of railroad company to keep stations and places where passengers alight from trains, in safe condition.

C. T. T. R. R. Co. v. Schmelling, 197 Ill. 619 (198 Ill. 9).

Of railroad company to allow passengers time to alight—shown—train stopped in street.

Ward v. C. & N. W. Ry. Co., 165 Ill. 462.

Of railroad company to guard tracks at stations—run down while going to board train.

C., St. P. & K. C. Ry. Co. v. Ryan, 165 Ill. 89.

Of railroad company as to passengers going beyond its line. The selling company is agent of connecting line.

C. & A. R. R. Co. v. Dumser, 161 Ill. 191.

Of carrier to stop at station so that passengers may safely alight.

C. & A. R. R. Co. v. Arnol, 144 Ill. 261.

Of railroad company to guard passengers against attack from mob of scab workman—shown.

C. & A. R. R. Co. v. Pillbury, 123 Ill. 11.

Of railroad company to furnish safe platform—cured by contributory negligence in boarding train.

C. & N. W. Ry. Co. v. Scates, 90 Ill. 586.

Care required by railroad company in expelling passenger from car for nonpayment of fare, and abusive language.

C., B. & Q. Ry. Co. v. Griffin, 68 Ill. 499.

Railroad conductor is under no duty to give a passenger a check for his fare.

C., B. & Q. Ry. Co. v. Griffin, 68 Ill. 499.

Duty of railroad company to carry passenger—regulations must be reasonable.

Churchill v. C. & A. R. R. Co., 67 Ill. 390.

Colored woman—duty of railroad company is to carry without discrimination.

C. & N. W. Ry. Co. v. Williams, 55 Ill. 185.

**To warn of danger.**

Of railroad company to give warning to laborers when switching cars onto track where their living car is located—shown.

*I. C. R. R. Co. v. Panebiango*, 227 Ill. 170.

To warn of danger from car hanging over main track—shown.

*Rogers v. C., C., C. & St. L. R. R. Co.*, 211 Ill. 126.

Duty of engineer to warn yard watchman of approach of engine—held shown.

*St. L. A. & T. H. R. R. Co. v. Eggman*, 161 Ill. 155.

Duty of engineer when he sees team approaching crossing—must give warning.

*C., B. & Q. Ry. Co. v. Lee*, 68 Ill. 576.

**As to speed of trains.**

Of railroad company as to speed of trains where there is no ordinance as to—common law.

*Partlow v. I. C. R. R. Co.*, 150 Ill. 322.

Of railroad company at common law, no statute or ordinance covering the point.

*C. & N. W. Ry. Co. v. Dunleavy*, 129 Ill. 135.

**At railroad crossings—public or private.**

Of railroad company to lower gates and ring bell at crossing.

*C. & A. R. R. Co. v. Wise*, 206 Ill. 453.

Of railroad company as to private farm crossing.

*B. & O. S. Ry. Co. v. Keck*, 185 Ill. 400.

Of railroad company toward one crossing track ahead of approaching train—must give all signals.

*C. & A. R. R. Co. v. Smith*, 180 Ill. 453.

Of railroad company to give signals of approach of train at crossing—shown.

*C., M. & St. P. Ry. Co. v. Walsh*, 157 Ill. 672.

Of railroad company to keep sidewalk at crossing approaches in good repair—not shown.

City of Bloomington v. I. C. R. R. Co., 154 Ill. 539.

Of railroad to ring bell at crossing—statute.

T. St. L. & K. C. Ry. Co. v. Cline, 135 Ill. 42.

Williams v. C. & A. R. R. Co., 135 Ill. 491.

Of railroad company to give warning at crossing applies to any crossing used by public, though not a public street.

C. & A. R. R. Co. v. Dillon, 123 Ill. 571.

Of railroad company to keep flagman at crossing—not to protect trespassers.

C., R. I. & P. Ry. Co. v. Elninger, 114 Ill. 79.

Care required of railroad company at crossings.

C., B. & Q. Ry. Co. v. Dunn, 61 Ill. 385.

Duty of railroad company at crossing.

C., B. & Q. R. R. Co. v. Cauffman, 38 Ill. 425.

### **Toward trespassers, licensees, etc.**

Of railroad company toward trespasser—after his presence in place of danger is known.

Martin, Admr., v. C. & N. W. Ry. Co., 194 Ill. 138.

Of railroad company toward trespasser stealing a ride—liable for injury to one thrown off by brakeman—that being within scope of his service.

I. C. R. R. Co. v. King, 179 Ill. 91.

Toward trespasser on railroad bridge, when his dangerous position is known to engineer.

Pierce, Receiver, v. Walters, 164 Ill. 560.

Toward trespassers when seen in position of danger—shown.

Wabash Ry. Co. v. Jones, 163 Ill. 167.

Not as to licensee on right of way.

L. S. & M. S. Ry. Co. v. Bodemer, 139 Ill. 597.

Of railroad company toward servants of private company using tracks.

Pennsylvania Co. v. Backes, 133 Ill. 255.

Of railroad company toward licensee.

C. & N. W. Ry. Co. v. Dunleavy, 129 Ill. 135.

Of railroad company to guard against injury to person on engine by invitation—child seven years old.

C., M. & St. P. Ry. Co. v. West, 125 Ill. 320.

Of railroad company toward person in place of danger.

C., B. & Q. Ry. Co. v. Johnson, 103 Ill. 512.

Duty of railroad company—person stealing a ride—duty of railroad company towards person fraudulently securing a ride without payment of fare—with consent of conductor.

G. W. & W. Ry. Co. v. Brooks, 81 Ill. 245.

Care required by railroad company as to persons walking on right of way.

I. C. R. R. Co. v. Godfrey, 71 Ill. 500.

### **To keep cars, etc., in repair.**

Of railroad company to keep cars in safe repair—defective coupling.

C. & E. I. Ry. Co. v. Snedaker, 223 Ill. 395.

To repair brake on box car—shown.

C. & E. I. R. R. Co. v. Kneirim, 152 Ill. 438.

Duty of railroad company to furnish sufficient number of men to operate trains—shown.

C. & N. W. Ry. Co. v. Donahue, 75 Ill. 106.

Care required by railroad company—running car in public street.

C., B. & Q. Ry. Co. v. Stumps, 69 Ill. 409.

Engineer is under no duty to slow up train for person walking parallel to track some distance ahead of engine.

C., R. I. & P. Ry. Co. v. Austin, 69 Ill. 426.

**Duty of carriers as to passengers.**

**P. C. & St. L. Ry. Co. v. Thompson**, 56 Ill. 138.

**Duty of carriers towards strangers.**

**I. C. R. R. Co. v. Phillips**, 55 Ill. 194.

Carriers must allow proper time to alight—what is reasonable time.

**T. W. & W. R. R. Co. v. Baddeley**, 54 Ill. 19.

**Care required by railroad.**

**I. C. R. R. Co. v. Hutchinson**, 47 Ill. 408.

**Care required by railroad companies in cities.**

**T. W. & W. R. R. Co. v. Hannon**, 47 Ill. 298.

**Highest care required by railroads of locomotives.**

**C. & A. R. R. Co. v. Shannon**, 43 Ill. 338.

Care required by railroad company of passenger not dependent on payment of fare.

**Ohio & M. Ry. Co. v. Muhling**, 30 Ill. 9.

Prima facie case against carrier is made by showing injury received. The burden is on the carrier to show itself free from blame.

**G. & C. U. R. R. Co. v. Yarwood**, 17 Ill. 509.

Care required of carriers of passengers—rule states—not insurers of safety.

**Frink v. Potter**, 17 Ill. 406.

Care required by carriers of passengers—not insurers of safety.

**G. & C. U. R. R. Co. v. Fay**, 16 Ill. 558.

**Care required by carriers of passengers.**

**G. & C. U. R. R. Co. v. Yarwood**, 15 Ill. 468.

**o. By Operators of Elevators.**

(See also **ELEVATORS**.)

Of operators of elevators to protect public.

**Chicago Exchange Bldg. Co. v. Nelson**, 197 Ill. 334.



Of elevator owner to adopt all new ways for safety—held shown.

Hodges v. Percival, 132 Ill. 53.

**p. By Those Handling Electricity.**

(See also **ELECTRICITY.**)

Care required by those handling electricity.

Rowe v. Taylorville Elec. Co., 213 Ill. 318.

To give notice when the current of electricity was to be turned on—not shown.

Rowe v. Taylorville Elec. Co., 213 Ill. 318.

**q. By Landlord.**

Of landlord to keep building in safe condition.

B. Shoninger Co. v. Mann, 220 Ill. 242.

Of landlord to disclose to tenant the presence or danger of sewer gas. Sickness caused by—recovery.

Sunasack v. Morey, 196 Ill. 569.

Of hotel keeper to keep premises safe—shown.

Hayward v. Merrill, 94 Ill. 349.

**r. By Owners of Buildings, Animals, etc.**

Owner of premises to provide safe place for employe of another, upon the premises doing work requested by owner.

North Amer. Rest. & Oyster House v. McElligott, Admr., 227 Ill. 317.

Of owners of animals—to keep them safe—horse ran over girl on street—broke loose.

Maxwell v. Durkin, 185 Ill. 546.

Of owner of building—to place fire escape under statute of 1885—violation shown.

Landgraf, Admx., v. Kuh et al., 188 Ill. 484.

Of owner of smoke stack to prevent same from falling on adjacent premises.

Boyce v. Snow, 187 Ill. 181.

Owner of premises is under no duty to mere licensee.

Gibson v. Leonard, 143 Ill. 184.

Of owner or occupant as to nuisance on premises.

Tomle v. Hampton, 129 Ill. 381.

Of owner of building to see that entrance to store is safe—shown.

Tomle v. Hampton, 129 Ill. 381.

Of bridge company to guard against injury to persons crossing.

St. Louis Bridge Co. v. Miller, 138 Ill. 465.

Of master to guard against injury to third persons. Pile of lumber fell on pedestrian.

Andrews v. Baedeker, 126 Ill. 605.

### **s. By Servants and Other Plaintiffs.**

(See also ORDINARY CARE.)

Of servants of corporations is to obey the law and ordinances, even though they oppose the rules of the corporation.

C. U. T. Co. v. Brethauer, 223 Ill. 521.

Of one approaching railroad crossing—rule.

I. C. R. R. Co. v. Grifing, 184 Ill. 9.

The servant is not relieved of his duty to use due care, by master's duty to inspect.

C. & A. R. R. Co. v. Bragonier, 119 Ill. 51.

Of brakeman to see that brakes are safe.

C. & A. R. R. Co. v. Bragonier, 119 Ill. 51.

### **t. Statutory—Violation Excuses Contributory Negligence.**

(See also CONTRIBUTORY NEGLIGENCE—STATUTES.)

Violation of statutory duty excuses exercise of due care by plaintiff.

Pawnee Coal Co. v. Royce, 184 Ill. 402.

**ELECTRICITY.**

**Defective insulation of electric wire.** Repairer was on pole repairing defective transformer. He had completed his work, when the foreman who stood on the ground below told plaintiff to touch wire on which the fuse was out. He did so, and owing to bad insulation received shock that threw him to the ground. Insulation shown defective for a "long time." No warning that current was on. Judgment \$4,000. Affirmed.

Chicago Suburban Water Co. v. Hyslop, 227 Ill. 308.

**Defective insulation and transformer—wires crossed.** Employee in car barn of defendant was killed by shock of electricity owing to defective insulation in wiring, and defect in transmutter and crossing of wires. Defendant had notice the day before, but did not search out the defect. Judgment \$3,500. Affirmed.

Goddard et al v. Enzler, Admx., 222 Ill. 462 (10-'06).

**Defective insulation—poleman shocked.** Lineman of telephone company was adjusting telephone wires on pole where light wires also ran. Deceased came into contact with poorly insulated light wire; was knocked from pole and killed. Judgment \$3,000. Affirmed.

Economy L. & P. Co. v. Sheridan, Admr., 200 Ill. 439 (12-'02).

**Defective transformer—wires in private house.** Electric light company wired plaintiff's house. A defective transformer outside the house permitted heavy current to enter the house wires. Plaintiff's wife killed while attempting to turn on the lights. Judgment for plaintiff. Affirmed.

The Alton Railway & I. Co. v. Foulds, Admr., 190 Ill. 367 (4-'01).

**Defective transformer—excessive current.** Joint action against Economy Company who operated, electric light plant

and firm that owned wires in the building. Defective transformer and excessive current caused deceased's death. Judgment \$5,000. Affirmed.

*Economy L. & P. Co. v. Stephen, Admr., 187 Ill. 137 (10-'00).*

**Wires crossed on pole—poleman knocked off pole.** Poleman employed by Telephone Company was killed while seeking to string a telephone wire above an electric light wire. Telephone wire came into contact with charged light wire. The shock knocked deceased from the pole to the ground. Contributory negligence. Discussion as to care required by persons dealing with electricity. Verdict directed for defendant. Affirmed.

*Amy Rowe, Admx., v. Taylorsville Elec. Co., 213 Ill. 318 (12-04).*

**Wire under sidewalk—boy shocked.** Electric wire under high sidewalk. Insulation wore off. Burned the wood of sidewalk causing smoke. Plaintiff, a boy, went under the sidewalk from curiosity and in trying to locate the cause of smoke, touched the electric wire. Judgment for plaintiff. Affirmed.

*Commonwealth Electric Co. v. Melville, 210 Ill. 70 (6-'04).*

**Electricity—live wire four feet from ground.** Live wire allowed to remain four feet from ground for five days in public street. Deceased came into contact with the uninsulated wire and was killed. Judgment \$2,000. Affirmed. Duty of city to see that electric wires are safe—shown. Contributory negligence in touching wire—not shown.

*The Village of Palestine v. Siler, Admr., 225 Ill. 630.*

**Live wire—uninsulated—lineman injured.** Lineman of telephone company came into contact with live wire (uninsulated) belonging to railway company; on another arm of same pole. Plaintiff did not know and had not been warned of the live wire. No inspection. Telephone company had knowledge. Judgment \$25,000. Affirmed.

*Postal Telegraph-Cable Co. v. Likes, 225 Ill. 249 (2-'07).*

**Live wire broke in street—child ran into it.** Defendant operated plant that lighted streets of Quincy. Wire broke, the ends falling to ground near sidewalk. Child eleven years old passing along street came into contact with the live wire. Judgment \$10,000. Affirmed.

*Quincy Gas & Elec. Co. v. Bauman*, 203 Ill. 295 (6-'03).

**Electric wire hanging from pole.** Garbage collector took hold of a wire, hanging from defendant's pole in an alley, which was in contact with a light wire hung on other poles. Judgment \$3,500 against telephone company reversed in appellate court without remanding on ground that telephone company did not own the hanging wire. Affirmed in supreme court.

*Hayes, Admr., v. Chicago Telephone Co.*, 218 Ill. 414 (12-'05).

**Wire sagged, and crossed live wire—child ran against.** A telephone wire sagged owing to the leaning of the poles and touched an electric light wire which conveyed the strong light current through the telephone wire. Plaintiff, a minor, ran against the wire and was injured. Judgment for plaintiff. Affirmed.

*Economy L. & Power Co. et al. v. Ailler*, 203 Ill. 518 (10-'03).

**Live wire in power house.** Boy seventeen years old, killed by contact with live wire in lighting plant. Property in hands of receiver. Judgment for defendant—reversed (69 Ill. App. 576 reversed).

*Bartlett v. Cicero Light Co.*, 177 Ill. 68 (12-'98).

**ELEVATORS.**

**Unguarded elevator—no rail—foot caught.** Passenger elevator was defective owing to absence of guards. Deceased's foot was caught between edge of elevator and an iron beam extending into elevator shaft. Foot amputated—blood poisoning caused death. Plaintiff knew of position of iron beam. Judgment \$3,000. Reversed in supreme court on contributory negligence as matter of law.

John Beldler et al., Admrs., v. Branshaw, Admx., 200 Ill. 425 (12-'02).

**Defective elevator—boy hurt—foot crushed.** Boy fourteen years old employed by defendant for two months. His duties required him to use the elevator. While on the elevator another boy wrestled him, throwing him down. His foot came over a space between elevator and floor of building and was crushed. Judgment \$1,500. Affirmed.

Siegel, Cooper & Co. v. Trcka, 218 Ill. 559 (12-'05).

**Defective elevator fell—passenger injured.** Passenger on elevator in building owned and controlled by defendant injured by fall of elevator, owing to defective machinery. Judgment \$25,000. Affirmed.

Warren Springer v. Fred Schultz, 205 Ill. 144 (10-'03).

**Elevator dropped—employee of tenant injured.** Employee of tenant of defendant was injured by fall of elevator in defendant's building. Duty of owners. Judgment for plaintiff. Affirmed.

Springer v. Ford, 189 Ill. 430 (4-'01).

**Elevator in apartment building fell and injured lady tenant who was a passenger.** No safety appliances—incompetent operator. Judgment \$7,000. Affirmed.

Hodges v. Bearse, 129 Ill. 87.

**Elevator fell injuring passenger—defective safety apparatus.** Judgment \$4,000. Affirmed.

1. Operator of elevator is carrier of passengers.
2. Fall of elevator shows negligence.

Hartford Deposit Co. v. Sollitt, 172 Ill. 222 (4-'98).

**Elevator fell with employee—defect.**

Union Show Case Co. v. Blindaner, 175 Ill. 325.

**Elevator fell—porter injured.** Defendant operated freight elevators to carry goods from floor to floor. Porter riding on elevator with goods. It fell owing to defective safety apparatus. Duty to inspect. Judgment for defendant.. Reversed and remanded.

McGregor v. Reid Murdoch Co., 178 Ill. 464 (2-'99).

**Elevator operator found dying at the bottom of shaft.** Deceased employed by defendant to run elevator. Was found dying at bottom of shaft. Had been dragged up by elevator and then dropped. No witnesses to accident. Judgment for plaintiff. Affirmed.

The Central Union Bldg. Co. v. Kolander, Admx., 212 Ill. 27.

**Elevator—negligence of foreman—operator injured.** Passenger elevator in public building would not stop even with floor owing to defect. Engineer ordered elevator man to run up and down until he located the defect. While "tinkering" the engineer loosened the brake so that the elevator could not be stopped and ran against the top, injuring plaintiff. Engineer was vice principal. Judgment \$2,250. Affirmed.

Slack v. Harris, 200 Ill. 96.

**Elevator—lady injured—unborn child injured.** Mother of plaintiff was near confinement. On invitation of defendant was riding on elevator sitting on chair. Chair struck side of elevator throwing mother down injuring her. Plaintiff was born badly crippled. Judgment for defendant. Affirmed. No cause of action. Discussion.

G. E. Allaire v. St. Luke's Hospital, 184 Ill. 359.

**Defective elevator shaft—employee fell into.** Employee injured by falling into elevator shaft. Door defective and left open. No light at elevator. Judgment for plaintiff. Affirmed.

*The H. Channon Co. v. Hahn*, 189 Ill. 28 (2-'01).

**Elevator—porter walked into open shaft—contributory negligence.** Porter in department store killed by walking into an elevator shaft while the door was open. Place poorly lighted. Another porter had opened the door to see where the elevator was. Light outside shaft. Contributory negligence. Judgment for defendant. Affirmed.

*W. H. Browne, Admr., v. Siegel, Cooper & Co.*, 191 Ill. 226 (6-'01).

**Employee fell down shaft.** No guards—no warning—no lights—railing left off shaft—unusual work. Judgment \$5,000. Affirmed.

*National Syrup Co. v. Carlson*, 155 Ill. 210.

**Elevator—started suddenly—passenger injured.** Plaintiff injured while riding on defendant's elevator. She was employed by an occupant of defendant's building and had gone down in the elevator to first floor. Boy opened door. She started to leave when it suddenly started and caught and crushed her. Judgment for plaintiff. Affirmed.

*Franklin Printing & Pub. Co. v. Behrens*, 181 Ill. 340 (10-'99).

**Freight elevator started with a jerk—load thrown against workman.** Defendant was excavating a tunnel in Chicago at depth of 110 feet. Vertical shaft ran to surface, in which was an elevator run by steam, made of a platform enclosed by a railing three feet high—used to hoist dirt. Plaintiff was a mule driver and carried material to the elevator. The cars were then hoisted to the surface. Plaintiff was riding upon the elevator, with a car of dirt. The engineer started the elevator with a jerk which threw the car against plaintiff and knocked him off the elevator. Discussion of fellow-servantship—held not shown. Judgment \$5,000. Affirmed in appellate and supreme courts.

*Duffy v. Kivillin*, 195 Ill. 630 (4-'02).



**Elevator suddenly started.** Elevator started as passenger entered at rear door. Operator did not see her. Judgment for plaintiff. Reversed because no negligence of defendant proven.

Cullen v. Higgins, 216 Ill. 78.

**Leaving elevator—suddenly started.** Passenger on elevator in building injured while attempting to leave elevator. Elevator suddenly started up. Leg broken below knee. Duty of elevator operators. Judgment \$2,000. Affirmed.

Chicago Exchange Bldg. Co. v. Nelson, 197 Ill. 334 (6-'02).

**Fell down elevator shaft.** Boy nineteen years old killed while taking goods from floor to floor on the elevator. Not his usual work. Judgment \$1,750. Affirmed.

Dallemand v. Saalfeldt, 175 Ill. 310.

**Passenger elevator in office building fell** owing to defective safety apparatus injuring a passenger on same. Operator of elevator held to be carrier of passengers. Fall of an elevator is prima facie evidence of negligence. Judgment \$4,000. Affirmed.

Hartford Deposit Co. v. Sullott, 172 Ill. 222 (70 Ill. App. 166 af'd).

**Open elevator shaft—scrub woman fell into—no lights.** Had scrubbed premises during eighteen months, prior to injury. Judgment for defendant directed. Affirmed. Due care not proven.

Jorgenson v. Johnson Chair Co., 169 Ill. 429.

**Elevator in flat building.** Door was left open as elevator went up. Occupant of flat walked through the door and fell down the shaft. Judgment for plaintiff. Affirmed.

Fisher v. Jansen, 128 Ill. 549.

**Elevator accident.** Guest of hotel fell down elevator shaft, the door of which he opened thinking it was the door of his room. Both doors were the same in appearance. Plaintiff volun-

teered to find his room without the bell-boy. Judgment \$2,000. Affirmed.

Haywood v. Merrill, 94 Ill. 349.

**Fell down elevator shaft—open.** Minor fell down elevator shaft in building leased by defendant from owner. Plaintiff was employed by sublessee of defendant. Elevator door open, no lights. Judgment \$10,000. Affirmed.

B. Shoniger Co. v. Mann, 219 Ill. 242.

**Child hit by descending elevator.** Door left open. Trespasser. Judgment \$3,500. Reversed in 41 Ill App. 279; appellate court reversed 143 Ill. 537; remanded 51 Ill. App. 74; second trial verdict directed; affirmed in appellate court; again reversed in supreme court in this case.

Siddall v. Jansen, 168 Ill. 43.

**Elevator accident.** Boy five years old—son of an employee who had brought him to store. The father went up in the elevator. The door was left open. The boy laid down to look into the shaft. The elevator came down upon him. Judgment \$10,000. Reversed in appellate court on ground defendant was under no duty to watch out for the child, but did not recite the facts as found by it. The supreme court reversed the appellate court and remanded to that court. (Same as 168 Ill. 43.)

Siddall v. Jansen, 143 Ill. 537.

**Elevator accident.** Disabled four months, on crutches six months, nurse three months. Physician expenses \$900. Bone of leg calloused. Salary. Judgment \$5,000. Affirmed.

Grosseman v. Cosgrove, 174 Ill. 383.

**Unattended elevator—stranger tried to operate.** Elevator was left in building unattended. Was a freight elevator in good repair. Plaintiff was injured while trying to operate it. Had no business in the elevator. Judgment for defendant. Affirmed.

O'Donnell, Admr., v. McVeagh, 205 Ill. 23 (10-'03)

**Workman repairing elevator—operator ran down upon him.** Siegel, Cooper & Co. employed independent contractor to repair elevator shafts. Plaintiff was employee of contractor sent in to do the repairing. Defendants' superintendent showed plaintiff where to work at bottom of shaft and directed elevator boy not to run below second floor. The boy did run below second floor and struck plaintiff at work. Judgment for plaintiff. Affirmed.

Siegel, Cooper & Co. v. Norton, 209 Ill. 201.

**Elevator fell with fireman in burning building.** Rope broke allowing counter weight to fall, striking fireman's leg. Amputation below the knee. Counter weight not guarded to prevent falling out of its slot. Judgment for defendant. Affirmed on ground that, owner owed no duty to the plaintiff.

Gibson v. Leonard, 143 Ill. 184.

**Elevator accident.** Plumber and steam fitter doing repairing in building fell down the elevator shaft because of absence of a guard or door, the shutter having been swung open for a long period before the injury. So dark plaintiff could not see door. Judgment for plaintiff. Affirmed.

Marder Luse & Co. v. Leary, 137 Ill. 319.

**Elevator fell in flat building.** Ran up to top and fell back. Tenant injured. Judgment \$1,500. Affirmed.

Hodges v. Percival, 132 Ill. 53.

**Hoisting cable of freight elevator broke.** Elevator fell injuring workman, who was taking goods to upper floor. Judgment \$2,500. Reversed and remanded because witness was allowed to testify from a memoranda, without which he had no recollection of the facts.

Diamond Glue Co. v. Wietzychowski, 227 Ill. 338.

**Elevator accident.** Fell down shaft. Deceased was delivering goods at building where elevator ran. He fell into a shaft in an out of the way part of the building, there being no guard across the open hatchway. Judgment \$5,000. Reversed—no negligence of defendant shown.

Murray v. McLean, 57 Ill. 378.

**EMPLOYMENT—RELATION—SCOPE OF.**

Pleading general issue admits employment as charged in declaration—special plea necessary to deny.

C. U. T. Co. v. Jerka, 227 Ill. 95. (See PLEADINGS.)

Held that the dinner hour comes within scope of the contract of.

Heldmaier v. Cobbs, 195 Ill. 172.

Contract of—a custom as to who shall build scaffolding has no effect on.

McBeath v. Rawle, Admx., 192 Ill. 626.

Relation of master and servant—not shown.

Pennsylvania Co. v. Backes, 133 Ill. 255.

Scope of—what is to hold master.

C., M. & St. P. Ry. Co. v. West, 125 Ill. 320.

L. S. & M. S. Ry. Co. v. Brown, 123 Ill. 163.

Servant of owning railroad company may also be servant of a leasing railroad company.

W. St. L. & P. Ry. Co. v. Peyton, 106 Ill. 534.

Scope of authority of servant of corporation.

C. C. Ry. Co. v. McMahon, 103 Ill. 485.

Liability of master for assault by servant.

C. & E. R. R. Co. v. Flexman, 103 Ill. 546.

C., B. & Q. Ry. Co. v. Bryan, 90 Ill. 126.

When a company suffers appearance to exist and its agents to act so as to give servant reason to believe he is employed by the company, he may regard the company as his employer and hold it as such.

Gowen Marble Co. v. Tarrant, 73 Ill. 608.

The master is liable for the negligence of his servant within the scope of his authority.

Noble v. Cunningham, 74 Ill. 51.

Declaration of an injured person just after injury, where he died soon after, held incompetent.

C., R. I. & P. Ry. Co. v. Bell, 70 Ill. 102.

The master is liable for the acts of a servant in the line of his duty.

N. W. Ry. Co. v. Hack, 66 Ill. 238.

Liability of corporations for acts of servants—scope of.

I. C. R. R. Co. v. Read, 37 Ill. 485.

**EQUAL MEANS OF KNOWLEDGE.**

The rule as to equal means of knowledge as now established in Illinois is:

1. If the servant fails to prove that he did not have equal means of knowing of the danger, with the master, he cannot recover; equal means of knowledge meaning that the servant by the exercise of ordinary care would necessarily have learned of, or been put on notice as to the danger.

2. If reasonable minds would differ as to the fact, equal means of knowledge by the servant is not shown.

Rule applies if ordinary care by the servant would have discovered the defect.

*E. J. & E. Ry. Co. v. Myers*, 226 Ill. 365.

Rule stated as "did not have equal opportunities of knowing" of danger.

*E. J. & E. Ry. Co. v. Myers*, 226 Ill. 365.

Rule as to applies where servant has as good opportunity of discovering latent danger by ordinary inspection as the master.

*Postal Tel.-Cable Co. v. Likes*, 225 Ill. 249.

Rule does not apply when it appears servant did not appreciate the danger although having some knowledge.

*Montgomery Coal Co. v. Barringer*, 218 Ill. 332.

Rule stated as "did not know of the defect and was not chargeable with knowledge of it."

*Sargent Co. v. Daublis*, 215 Ill. 433.

Doctrine as to—held not shown.

*Belt Railway Co. v. Confrey*, 209 Ill. 344.

Rule as to stated.

**Barnett & Record Co. v. Schlapka**, 208 Ill. 426.

Doctrine as to does not apply to hidden defects and does not require inspection.

**C. & E. I. R. R. Co. v. Heerey**, 203 Ill. 499.

Held not shown—scaffolding fell.

**Metcalf Co. v. Nysted**, 203 Ill. 333.

That plaintiff had—when not shown.

**Wrisley Co. v. Burke**, 203 Ill. 250.

Evidence as to obviousness of danger—proper.

**Wrisley Co. v. Burke**, 203 Ill. 250.

Evidence tending to show.

**Howe v. Medaris**, 183 Ill. 293.

Held not shown—scaffolding fell—building under construction.

**C. & A. R. R. Co. v. Scanlan**, 170 Ill. 112.

**Hines Lumber Co. v. Ligas**, 167 Ill. 56.

It must appear that servant did not have equal means of knowledge with the master. This is the first case stating the rule.

**Goldie v. Werner**, 151 Ill. 552.

**ERRORS—RULES AS TO.**

**Error.** When refusal to allow witness to answer is harmless.

*City of Chicago v. McNally*, 227 Ill. 14.

**Must do harm to the party objecting.**

*C. C. Ry. Co. v. Anderson*, 193 Ill. 9.

*W. C. St. Ry. Co. v. Maday*, 188 Ill. 308.

*Pioneer Fireproof Con. Co. v. Sunderland*, 188 Ill. 341.

*C. & A. R. R. Co. v. Cullen, Admx.*, 187 Ill. 523.

**Must do harm to justify reversal.**

*C. & E. I. R. R. Co. v. Knapp*, 176 Ill. 127.

*Pennsylvania Co. v. McCaffrey*, 173 Ill. 168.

*City of East Dubuque v. Burlite*, 173 Ill. 553.

*Village of Chatworth v. Rowe*, 166 Ill. 114.

*City of Chicago v. Stearns*, 105 Ill. 554.

**Must be pointed out to be considered.**

*B. & O. R. R. Co. v. Alsop*, 176 Ill. 470.

**Common to both sides, is waived.**

*L. S. & M. S. Ry. Co. v. Conway*, 169 Ill. 505.

*Pierce, Receiver, v. Walters*, 164 Ill. 560.

**Must be duly assigned or will not be reviewed.**

*Swift & Co. v. Fue*, 167 Ill. 443.

**In excluding proper evidence—when harmless.**

*Ashley Wire Co. v. Marcier*, 163 Ill. 486.

**Evidence of custom of street car to stop at unusual place, held reversible.**

*W. C. St. Ry. Co. v. Torpe, Admr.*, 187 Ill. 610.

**When beneficial, cannot be complained of.**

*Ashley Wire Co. v. Marcier*, 163 Ill. 486.

**Must appear in abstract of record.**

*City Elec. Ry. Co. v. Jones*, 161 Ill. 47.



Allowing evidence of repairs made after the injury is reversible.

Howe v. Medaris, 183 Ill. 288.

In one's own favor, cannot be objected to.

Swift & Co. v. Putkowski, 182 Ill. 18.

Decatur C. M. Co. v. Gogerty, 180 Ill. 197.

In sustaining demurrer to plea of statute of limitations—reversible.

C. C. Ry. Co. v. Leach, 182 Ill. 359.

When not of sufficient importance to reverse judgment.

C. C. Ry. Co. v. Pural, 224 Ill. 686.

In excluding or admitting evidence must do harm.

Ill. Steel Co. v. Mann, 197 Ill. 186.

O'Fallon C. & M. Co. v. Laquet, 198 Ill. 125.

C. C. Ry. Co. v. Shaw, 220 Ill. 532.

Misreading of deposition by attorney is reversible.

Lake St. "L" Ry. Co. v. Shaw, 203 Ill. 39.

Both sides trying the case on the wrong theory waives the error.

Spring Valley Coal Co. v. Robizas, 207 Ill. 226.

Not assignable on opinion of appellate court.

I. C. R. R. Co. v. Smith, 208 Ill. 608.

C. C. Ry. Co. v. Mead, 206 Ill. 174.

Voight, Admx., v. Anglo-Amer. Pro. Co., 202 Ill. 462.

In refusing evidence—what showing must be made in bill of exceptions to raise.

A. Ittner Brick Co. v. Ashby, Admr., 198 Ill. 562.

In sustaining objection to question if "witness knew of any reason why deceased could not see train"—not shown.

C. & A. R. R. Co. v. Person, 184 Ill. 386.

Excluding proper evidence—when not reversible.

Union Rendering Co. v. Kreft, 159 Ill. 381.

When not—to refuse special interrogatories offered.

Norton v. Volzke, 158 Ill. 403.

Will not reverse where the judgment is correct and does justice.

*Pennsylvania Coal Co. v. Kelly*, 156 Ill. 9.

Assignment of—abandoned if not argued in brief.

*Harris v. Shebek*, 151 Ill. 287.

Assignment of erroneous instruction not good where objector secured instruction containing same error.

*City of Beardstown v. Smith*, 150 Ill. 169.

In excluding evidence—cured if point otherwise proved.

*Mitchell v. Hindman*, 150 Ill. 538.

*C. C. R. R. Co. v. VanVleck*, 143 Ill. 480.

*Tudor Iron Works v. Weber*, 129 Ill. 535.

May be cured by the evidence.

*C. C. Ry. Co. v. McLaughlin*, 146 Ill. 353.

Common to both sides will not reverse.

*Consolidated Coal Co. v. Haenni*, 146 Ill. 614.

Not assignable on opinion of appellate court.

*Pennsylvania Co. v. Keane*, 143 Ill. 172.

Must prejudice to reverse.

*C. C. Ry. Co. v. VanVleck*, 143 Ill. 480.

*C. & E. I. R. R. Co. v. Bivans*, 142 Ill. 402.

Instruction on comparative negligence is not.

*L. S. & M. S. Ry. Co. v. Johnson*, 135 Ill. 641.

Will not always reverse—rule stated.

*Hodges v. Percival*, 132 Ill. 53.

*Town of Wheaton v. Hadley*, 131 Ill. 640.

In sustaining plea of statute of limitations—when cured.

*Blanchard v. L. S. & M. S. Ry. Co.*, 126 Ill. 417.

In refusing instruction—when not reversible.

*L. S. & M. S. Ry. Co. v. O'Conner*, 115 Ill. 255.

In instruction—when not harmful.

*Beard v. Skeldon*, 113 Ill. 584.

If probably harmful, will reverse.

Peek v. Cooper, 112 Ill. 192.

Will not reverse if justice has been done.

C., B. & Q. Ry. Co. v. Warner, 108 Ill. 538.

Lowry v. Coster, 91 Ill. 182.

Slight—in admission of evidence—not reversible.

L. E. & W. Ry. Co. v. Zaffinger, 107 Ill. 199.

When should reverse—rule.

Pennsylvania Co. v. Stoelke, 104 Ill. 201.

In admitting evidence when not reversible.

C. & E. I. Ry. Co. v. Rung, 104 Ill. 641.

Pennsylvania Co. v. Rudel, 100 Ill. 603.

Error in instruction or as to evidence will not reverse where justice is done.

Ryan v. Donnelly, 71 Ill. 100.

Error must do injury.

Coursen v. Ely, 37 Ill. 338.

Error in parties' names in record not reversible. Names correct in pleadings.

Frink v. Schroyer, 18 Ill. 416.

**ESTOPPEL.**

Defendant is estopped from raising contributory negligence as a matter of law where he secures an instruction submitting the question to the jury as a matter of fact.

C. T. T. R. R. Co. v. Schmelling, 197 Ill. 619.

Passenger on elevator injured by falling of, is not estopped from suing landlord because of clause in lease exempting landlord from damages.

Springer v. Ford, 189 Ill. 430.

Asking and securing instruction as to question of negligence waives an objection that there is no evidence tending to prove.

Consolidated Coal Co. v. Haenin, 146 Ill. 614.

Company is estopped from relying on rule against riding on platform of car—when.

N. C. St. Ry. Co. v. Williams, 140 Ill. 275.

Securing instruction on duty estops denial of duty.

L. S. & M. S. Ry. Co. v. Johnson, 135 Ill. 641.

Plaintiff is not estopped to deny release—when.

C., R. I. & P. Ry. Co. v. Lewis, 109 Ill. 122.

**EVIDENCE.**

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AS TO ASSUMED RISK, p. 181.  
AS TO ASSURANCE OF SAFETY, p. 184.  
WRITTEN CONTRACT AS, p. 184.  
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**a. After Injury—As to Acts or Conditions.**

Of condition of machinery after accident when good.

City of Chicago v. Jarvis, 226 Ill. 614.

Of inspection after injury when not error to refuse.

Goddard v. Enzler, 222 Ill. 462.

Of plaintiff's condition after injury—good.

Richardson v. Nelson, 221 Ill. 254.

Of condition of car after collision—good to show speed.

Elgin, A. & S. T. Co. v. Wilson, 217 Ill. 47.

Of operation after suit began—good under general averment.

City of Gibson v. Murray, 216 Ill. 589.

Of appearance of boiler after explosion—good.

I. C. R. R. Co. v. Prickett, 210 Ill. 140.

Of physical examination long after injury when good.

W. C. St. Ry. Co. v. Dougherty, 209 Ill. 241.

That plaintiff refuses examination by defendant's physician effect.

Marquette Coal Co. v. Dielle, 208 Ill. 117.

Of acts subsequent to injury when good on cross-examination.

C. & A. R. R. Co. v. Howell, 208 Ill. 155.

Of examination of engine after explosion good when.

C. & E. I. Ry. Co. v. Rains, Admx., 203 Ill. 417.

Of physician examining plaintiff day before trial when good.

I. C. R. R. Co. v. Delac, 201 Ill. 150.

Of condition of machinery after accident when good.

Slack v. Harris, 200 Ill. 96.

Of condition of car after accident several days good.

St. L. P. & N. Ry. Co. v. Dorsey, 189 Ill. 251.

Of repairs after injury reversible error.

Howe v. Medaris, 183 Ill. 288.

Of examination of defective draw-bar two hours after accident.

C. & N. W. Ry. Co. v. Gillison, 173 Ill. 264.

Of facts happening after injury incompetent.

City of Bloomington v. Legg, Admr., 151 Ill. 10.

Evidence of condition of place of injury after accident—when good.

C., P. & St. L. Ry. Co. v. Lewis, 145 Ill. 67.

Evidence of adultery after injury when incompetent when offered to disprove nature of injury.

Joliet St. Ry. Co. v. Call, 143 Ill. 177.

Evidence of construction of cars—good—when.

N. C. St. Ry. Co. v. Cotton, 140 Ill. 487.

Evidence of repairs after injury—bad but not reversible.

Weber Wagon Co. v. Kehl, 139 Ill. 644.

Evidence of condition of sidewalk two weeks after injury—good—when.

City of Bloomington v. Osterle, 139 Ill. 120.

Evidence of condition of track six months after the injury when good.

J. S. E. Ry. Co. v. Southworth, 135 Ill. 250.

Evidence of acts after injury—incompetent—when.

Hodges v. Percival, 132 Ill. 53.

Of condition after injury competent—when.

City of Chicago v. Dalle, 115 Ill. 386.

Evidence of repairs after the injury is bad, but if there is sufficient other evidence to show sidewalk defective it is not harmful error.

Village of Warren v. Wright, 103 Ill. 298.

Evidence that a person injured disregarded instruction of physician so as to irritate injury and death resulted is competent.

Schmidt v. Mitchell, 84 Ill. 195.

### **b. As to Assumed Risk.**

(See ASSUMED RISK—NEGLIGENCE.)

Of assumed risk—shown as matter of law.

McCormick H. Mch. Co. v. Zakzewski, 220 Ill. 522.

Of assumed risk—danger from trains.

Elgin, J. & E. Ry. Co. v. Hoadley, 220 Ill. 463.

Of assumed risk—steel mill accident.

Ill. Steel Co. v. Ziemkowski, 220 Ill. 324.

Of assumed risk—incompetent except where contract relation exists.

Shoninger Co. v. Mann, 219 Ill. 242.

Of assumed risk by minor—cannot be shown.

Siegel, Cooper & Co. v. Trcka, 218 Ill. 559.

Of assumed risk—not sufficient.

Leighton, etc. Steel Co. v. Snell, 217 Ill. 152.

Of assumed risk—minor—not.

Ill. Third Vein Coal Co. v. Cloni, 215 Ill. 583.

Of assumed risk in dangerous work—not shown.

Hansell Elcock F. Co. v. Clark, 214 Ill. 399.

As to assumed risk insufficient—rule.

Sargent Co. v. Baublis, 215 Ill. 428.



Of assumed risk based on knowledge—shown.

Ill. Terra Cotta Lumber Co. v. Hanley, 214 Ill. 243.

Of assumed risk of unseen danger—not shown.

Ill. Steel Co. v. Olste, 214 Ill. 181.

Of assumed risk of bad insulation—shown.

Rowe, Admx., v. Taylorville Elec. Co., 213 Ill. 318.

Of assuming risk by section hand—not shown.

I., I. & I. R. R. Co. v. Otstol, 212 Ill. 429.

Of assumed risk based on knowledge—not shown.

Henrietta Coal Co. v. Campbell, 211 Ill. 216.

Of assumed risk—insufficient—cog wheels.

Rock Island S. & D. Works v. Pohlman, 210 Ill. 133.

Of assumed risk—insufficient.

Ill. Term. R. R. Co. v. Thompson, 210 Ill. 226.

Of assumed risk—what constitutes.

C. & E. I. R. R. Co. v. White, Admr., 209 Ill. 124.

That risk was assumed—held sufficient.

C. & A. R. R. Co. v. Bell, 209 Ill. 25.

Of assumed risk—insufficient.

C. & A. R. R. Co. v. Howell, 208 Ill. 155.

Of assuming risk outside regular duties not sufficient.

Grace & Hyde Co. v. Probst, 208 Ill. 147.

Of assumed risk where work is dangerous.

Pressed Steel Co. v. Herath, 207 Ill. 576.

That plaintiff worked under orders negatives assumed risk.

Cobb Chocolate Co. v. Knudson, 207 Ill. 452.

That Mine Act is violated negatives assumed risk.

Riverton Coal Co. v. Shepherd, 207 Ill. 395.

Of assumed risk of defective rope—insufficient.

Ill. Steel Co. v. Wierzbicky, 206 Ill. 201.

Of assumed risk—not sufficient.

*Momence Stone Co. v. Turrell*, 205 Ill. 515.

Of assumed risk though promise to repair—sufficient.

*Webster Mfg. Co. v. Nisbett*, 205 Ill. 273.

Of assumed risk—sufficient.

*Trakal v. Huesner Baking Co.*, 204 Ill. 179.

Of assumed risk—not sufficient.

*Chicago Hair & Bristle Co. v. Mueller*, 203 Ill. 558.

Of assumed risk—not—hand caught in defective machine.

*Chicago Screw Co. v. Weiss*, 203 Ill. 536.

Of assumed risk—not good where acting under orders (see ORDERS, etc.).

• *C. & E. I. R. R. Co. v. Heerey*, 203 Ill. 492.

Of assumed risk—probably sufficient.

*C. & E. I. R. R. Co. v. Heerey*, 203 Ill. 492.

Of assumption of risk—insufficient.

*Wrisley Co. v. Burke*, 203 Ill. 250.

Of assumed risk—not sufficient where negligence is of master.

*Metcalf Co. v. Nystedt*, 203 Ill. 333.

Of assuming risk of barrel falling from platform—not

*Armour v. Golkowska*, 202 Ill. 144.

Of assumed risk insufficient—under direct orders of foreman.

*Hartrich v. Hawes*, 203 Ill. 334.

Of assumed risk—defective coupler—not.

*Malott, Receiver, v. Hood*, 201 Ill. 202.

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*Slack v. Harris*, 200 Ill. 96.

What is not—of assumed risk.

*Sinclair Co. v. Waddill*, 200 Ill. 17.

**c. As to Assurance of Safety.**

(See also ASSURANCE OF SAFETY.)

Of assurance of safety—when relieves of assumed risk.

Consolidated Coal Co. v. Shepherd, 220 Ill. 123.

Of assurance of safety—does not excuse contributory negligence.

Baier v. Selke, 211 Ill. 512.

Of assurance of safety by foreman—force of.

C. W. & V. Coal Co. v. Moran, 210 Ill. 9.

Of assurance of safety by defendant's superintendent—competent.

Siegel, Cooper & Co. v. Norton, 209 Ill. 201.

Of assurance of safety by boss, excuses inspection by plaintiff.

C. & E. I. Ry. Co. v. Driscoll, 207 Ill. 9.

**d. Written Contracts as—Competency, etc.**

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C. W. & V. Coal Co. v. Moran, 210 Ill. 9.

Of contract set out in special plea—competent when.

Blank v. I. C. R. R. Co., 182 Ill. 332.

Contract between railroad company and street railway company not good where passenger was injured in collision.

W. C. St. Ry. Co. v. Martin, 154 Ill. 523.

**e. As to Acts and Conditions Before Injury.**

Of other accidents from same cause proper.

City of Chicago v. Jarvis, 226 Ill. 614.

City of Bloomington v. Legg, 151 Ill. 10.

Of plaintiff's health before the injury competent.

C. C. Ry. Co. v. Pural, 224 Ill. 686.

Of prior acts—exception to rule that cannot be shown.

Taylor Coal Co. v. Dawes, 220 Ill. 145.

Of prior injury on same machine—good.

Franke v. Hanley, 215 Ill. 216.

That semaphore was in usual good repair just before accident good.

C. & A. R. R. Co. v. Vipond, 212 Ill. 199.

As to having heard of plaintiff having disease bad.

C. C. Ry. Co. v. Uhter, 212 Ill. 174.

That motorman and conductor were arrested incompetent.

C. C. Ry. Co. v. Uhter, 212 Ill. 174.

Of plaintiff's sanity before and after—who may testify.

C. U. T. Co. v. Lawrence, 211 Ill. 373.

Of when engine was built and how far run good.

I. C. R. R. Co. v. Prickett, 210 Ill. 140.

Of repairs on sidewalk just prior to injury—force of.

Village of Willamette v. Brachle, 209 Ill. 621.

That others fell on same sidewalk good to show place out of repair.

City of Taylorville v. Stafford, 196 Ill. 288.

As to how trains were run before injury improper.

C., B. & Q. R. R. Co. v. Pollock, 195 Ill. 156.

That brake and controller were out of repair proper.

S. C. C. Ry. Co. v. Purvis, 193 Ill. 454.

Of third party as to condition of sidewalk at and before injury—proper.

Bibbins v. City of Chicago, 193 Ill. 359.

That machine was defective before injury good when proper connection is made.

Pioneer Cooperage Co. v. Romanowicz, 186 Ill. 9.

That horse ran away ten days before bad.

I. C. R. R. Co. v. Griffen, 184 Ill. 9.

As to railroad gates by witness crossing track just before accident good.

*Overtoom v. C. & E. I. R. R. Co.*, 181 Ill. 325.

Of other accidents at same place good to rebut evidence that no accident had occurred before.

*I. C. R. R. Co. v. Treat*, 179 Ill. 576.

Of similar injuries from same cause when proper.

*Fraser & Chalmers v. Schroeder*, 163 Ill. 459.

Of plaintiff's movement before the injury good.

*N. Y. C. & St. L. R. R. Co. v. Luebeck*, 157 Ill. 595.

That saloonkeeper refused to sell to husband—when incompetent.

*Wolfe v. Johnson*, 152 Ill. 280.

Of the original construction of a sidewalk competent.

*City of Bloomington v. Legg, Admr.*, 151 Ill. 10.

Evidence of disease ten years before injury—incompetent.

*N. C. St. Ry. Co. v. Cotton*, 140 Ill. 487.

Evidence of similar injury at prior time—good on rebuttal.

*Chicago Anderson Pressed Brick Co. v. Reinneiger*, 140 Ill. 334.

Evidence of condition of track how far competent where train jumped the track.

*J. S. E. Ry. Co. v. Southworth*, 135 Ill. 250.

Evidence that no accident had happened before—incompetent.

*Hodges v. Bearse*, 129 Ill. 87.

Evidence of failure to give signal at crossing at other times—improper—for any purpose.

*C. B. & Q. Ry. Co. v. Lee*, 60 Ill. 501.

That horses had run away before—immaterial.

*City of Centralia v. Scott*, 59 Ill. 129.

Evidence of other accidents at same place—good—when.

*City of Chicago v. Powers*, 42 Ill. 169.

Conduct of passengers during an accident may be shown as indicating their state of mind.

*G. & C. U. R. R. Co. v. Fay*, 16 Ill. 558.

**f. Circumstantial—Rules as to.**

Circumstantial—instruction as to badly drawn.

*C. C. Ry. Co. v. Nelson*, 215 Ill. 436.

Circumstantial good to show ordinary care.

*Central Union Bldg. Co. v. Kolander*, 212 Ill. 27.

Circumstantial when good—instruction.

*M. S. Brewing Co. v. Stoltenberg*, 211 Ill. 531.

Circumstantial when competent.

*Garabaldi & Cuneo v. O'Connor*, 210 Ill. 284.

Circumstantial—instruction as to approved.

*N. C. St. Ry. Co. v. Rodert*, 203 Ill. 413.

Circumstantial to prove ordinary care good.

*N. C. St. Ry. Co. v. Rodert*, 203 Ill. 413.

Circumstantial as to who made a certain statement.

*C. & A. R. R. Co. v. Gare*, 202 Ill. 188.

Circumstantial to show cause of injury good.

*Economy L. & P. Co. v. Sheridan*, 200 Ill. 439.

Comparative value of direct and circumstantial—none.

*Slack v. Harris*, 200 Ill. 96.

Circumstantial—when competent to prove negligence or due care.

*City of Salem v. Webster*, 192 Ill. 369.

Evidence circumstantial—good to show negligence.

*C. M. & St. P. Ry. Co. v. Halsey*, 133 Ill. 248.

Circumstantial competent to show care or negligence.

*P. & P. U. Ry. Co. v. Clayberg, Admr.*, 107 Ill. 644.

Circumstantial—competent to show due care.

*C. B. & Q. Ry. Co. v. Gregory*, 58 Ill. 272.

**g. As to Competency, Sufficiency and Force of.**

Of open and obvious danger—held sufficient.

McCormick & Mch. Co. v. Zakyewski, 220 Ill. 522.

Of “permanent” door under Mine Act—what is.

Madison Coal Co. v. Hayes, 215 Ill. 625.

Sufficiency of, not reviewed in supreme court.

C. U. T. Co. v. Newmiller, 215 Ill. 383.

That servant or agent not guilty—master exonerated.

Hayes, Admr. v. Chicago Telephone Co., 218 Ill. 414.

Of fright without injury—force of.

Elgin A. & S. T. Co. v. Wilson, 217 Ill. 47.

Evidence held not to prove pleadings.

C. C. Ry. Co. v. Jordan, 215 Ill. 390.

Preponderance of—instruction as to.

C. C. Ry. Co. v. Nelson, 215 Ill. 436.

Of danger—is not evidence of negligence.

M. & O. R. R. Co. v. Vallowe, 214 Ill. 124.

Of customary use of a passage way in a mine—good.

C. W. & V. Coal Co. v. Moran, 210 Ill. 9.

That servant was warned—force of on master’s liability.

Grace & Hyde Co. v. Probst, 208 Ill. 147.

Of width of cars of a series—good if car is of series.

C. & A. R. R. Co. v. Howell, 208 Ill. 155.

Conflict of—as to warning to plaintiff at crossing.

P. C. C. & St. L. Ry. Co. v. Smith, 207 Ill. 486.

Of defect—held sufficient.

Metcalf Co. v. Nystedt, 203 Ill. 333.

Of offer of pay to witness—good.

M. S. Brewing Co. v. Ruddy, 203 Ill. 306.

Of testimony of witness at former trial.

Ill. Steel Co. v. Wierzbicki, 206 Ill. 201.

Of intoxication of driver of wagon—when proper.

Knickerbocker Ice Co. v. Benedix, 206 Ill. 362.

Conflict of—as to manner of “alighting.”

N. C. St. Ry. Co. v. Wellner, 206 Ill. 272.

That “grab-iron” gone—good under bad repair count.

Belt Ry. Co. v. Confrey, 209 Ill. 344.

Of interstate commerce—what is.

Malatt, Receiver v. Hood, 201 Ill. 202.

Attempt to manufacture evidence—may be shown.

M. S. Brewing Co. v. Ruddy, 203 Ill. 306.

As to obviousness of a defect—proper.

Wrisley Co. v. Burke, 203 Ill. 250.

That door is principal door of mine—sufficient.

Himrod Coal Co. v. Steven, 203 Ill. 115.

In action against joint tort feasons what proper.

C. & A. R. R. Co. v. Murphy, 198 Ill. 462.

Of child when admissible—force of.

C. C. Ry. Co. v. Touhy, 196 Ill. 410.

Oral as to contents of book good—foundation for.

Suburban Ry. Co. v. Balkwill, 195 Ill. 535.

Preponderance of—meaning—rule as to.

C. B. & Q. R. R. Co. v. Po'lock, 195 Ill. 156.

Competent if having any bearing on issues made by the pleadings.

S. C. C. Ry. Co. v. Purvis, 193 Ill. 454

I. C. R. R. Co. v. Aland, 192 Ill. 37.

That bell was not rung at crossing—good though no ordinance or statute as to.

I. C. R. R. Co. v. Aland, 192 Ill. 37.

As to “propelling engine” with great force—good.

I. C. R. R. Co. v. Aland, 192 Ill. 37.



Sur-rebuttal—good to offset testimony of doctor of plaintiff, given in rebuttal.

City of Rock Island v. Starkey, 189 Ill. 515.

To show that plaintiff was rightfully on an elevator—good.

Springer v. Ford, 189 Ill. 430.

Competent for one purpose is good though incompetent for another purpose.

N. C. St. Ry. Co. v. Kaspers, 186 Ill. 246.

Not strictly pertinent may be so indirectly.

Pioneer Cooperage Co. v. Romanowicz, 186 Ill. 9.

Of defect in machine—held sufficient.

Pioneer Cooperage Co. v. Romanowicz, 186 Ill. 9.

That train was running “fast”—good.

Overtoom v. C. & E. I. R. R. Co. 181 Ill. 325.

I. C. R. R. Co. v. Ashline, 171 Ill. 313.

That railroad is in populous part of city—good.

Overtoom v. C. & E. I. R. R. Co., 181 Ill. 325.

Of talks with attorney—promises of expenses and pay—force of.

N. C. St. Ry. Co. v. Anderson, 176 Ill. 635.

Of warning given to saloonkeeper good—dram shop case.

Siegle v. Rush, 173 Ill. 559.

As to date of injury not confined to that stated in declaration.

City of Dubuque v. Burhyte, 173 Ill. 553.

Differing descriptions of accident—force of.

Washington Ice Co. v. Bradley, 171 Ill. 255.

That a thing did not happen—good.

W. C. St. Ry. Co. v. Mueller, 165 Ill. 499.

That workmen objected to the machinery.

Ashley Wire Co. v. Mercier, 163 Ill. 486.

Evidence—rebutting defined.

City of Sandwich v. Dolan, 141 Ill. 432.

Evidence—when may be relevant though not so alone.

Central Ry. Co. v. Allmon, 147 Ill. 471.

Evidence as to how premises could be made safe—good—when.

Webber Wagon Co. v. Kehl, 139 Ill. 644.

Negative as to ringing of bell or blowing of whistle—good.

C. & A. R. R. Co. v. Dillon, 123 Ill. 571.

That bartender was ordered not to sell—when good.

Mayers v. Smith, 121 Ill. 442.

When competent—general rule.

City of Joliet v. Conway, 119 Ill. 490.

Of surroundings of place of injury—competent.

Citizen's Gas Light Co. v. O'Brien, 118 Ill. 175.

Of retaining servant who illegally ejected colored man from bus—good on question of animus.

Peck v. Cooper, 112 Ill. 192.

Rule as to relevancy.

City of Chicago v. Dalle, 115 Ill. 386.

Evidence in rebuttal should contradict.

C. & N. W. Ry. Co. v. Moranda, Admx., 108 Ill. 576.

Competent on any issue is admissible.

C. R. & I. P. Ry. Co. v. Clark, 108 Ill. 114.

To show premises in repair improperly refused.

Pennsylvania Co. v. Boylan, 104 Ill. 595.

In rebuttal—when erroneously excluded.

Pennsylvania Co. v. Boylan, 104 Ill. 595.

As to whether witness would have known of defect if it existed held proper.

Pennsylvania Co. v. Boylan, 104 Ill. 595.

To prove marriage—parol sufficient.

Lowry v. Coster, 91 Ill. 182.

## 192 EVIDENCE—CONTRIBUTORY NEGLIGENCE, ETC.

Evidence that servant constructing sewer had been told by aldermen to do no blasting is competent.

*City of Joliet v. Sewer*, 86 Ill. 402.

Evidence as to marriage—when immaterial—in personal injury case.

*G. W. & W. Ry. Co. v. Brooks*, 81 Ill. 245.

Evidence of the number of miles of side walk in the city—incompetent.

*City of Chicago v. Elzeman*, 71 Ill. 131.

That servant acted against instructions—no defense.

*T. W. & W. R. R. Co. v. Hannon*, 47 Ill. 298.

Evidence tending to show malice competent.

*Aulger v. Smith*, 34 Ill. 534.

That railway was operated in state and county where suit begun—necessary.

*C. R. I. & P. Ry. Co. v. Morris*, 26 Ill. 400.

### **g-1. As to Contributory Negligence, Due Care, etc.**

See CONTRIBUTORY NEGLIGENCE, ORDINARY CARE.)

To show why plaintiff acted as he did—good as bearing on due care.

*U. S. W. E. & P. Co. v. Butcher*, 223 Ill. 628.

Of due care—direct proof not required.

*Elgin J. & E. Ry. Co. v. Hoadley*, 220 Ill. 463.

Of due care in place of danger.

*Elgin J. & E. Ry. Co. v. Hoadley*, 220 Ill. 463.

Of same negligence of servant at prior times—good.

*Taylor Coal Co. v. Dawes*, 220 Ill. 145.

Of due care by deaf person—what is.

*Toledo P. & W. Ry. Co. v. Hammett*, 220 Ill. 9.

Of contributory—not as matter of law.

*Toledo P. & W. Ry. Co. v. Hammett*, 220 Ill. 9.

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Of contributory negligence—failure to look and listen not per se.

Toledo P. & W. Ry. Co. v. Hammett, 220 Ill. 9.

Of contributory negligence—going to platform of street car—not.

Alton Railway Gas & E. Co. v. Webb, 219 Ill. 563.

Of contributory negligence—not as matter of law.

National E. & S. Co. v. McCorkle, 219 Ill. 557.

Of contributory negligence—not—fell into elevator.

Shoninger Co. v. Mann, 219 Ill. 242.

Of contributory negligence and notice where statute violated immaterial.

Kellyville Coal Co. v. Strine, 217 Ill. 516.

Of contributory negligence in getting off moving train.

Hewes v. C. & E. I. R. R. Co., 217 Ill. 500.

Of crossing railroad tracks as contributory negligence—not.

C. U. T. Co. v. Jacobsen, 217 Ill. 404.

Of contributory negligence riding on bumper of street car—not.

C. C. Ry. Co. v. Schmidt, 217 Ill. 396.

Of contributory negligence—turning onto street car track—not.

W. C. St. Ry Co. v. Schulz, 217 Ill. 322.

Of contributory negligence of plaintiff who knew of defective sidewalk.

City of Mattoon v. Faller, 217 Ill. 273.

Of contributory negligence in getting off car—conductor's suggestion.

B. & O. S. R. R. Co. v. Mullen, 217 Ill. 203.

Of contributory negligence—not.

Leighton, etc., Steel Co. v. Snell, 217 Ill. 152.

Of a safer way—contributory negligence where there is.

C. & A. R. R. Co. v. Walters, 217 Ill. 87.

## 194 EVIDENCE—CONTRIBUTORY NEGLIGENCE, ETC.

Of contributory negligence—passenger riding in engine.

I. C. R. R. Co. v. Jennings, 217 Ill. 140.

Of contributory negligence—standing on platform not.

Alton Light & T. Co. v. Oller, 217 Ill. 15.

Of ordinary care in sudden danger—what is.

South Chicago C. Ry. Co. v. Kinnare, 216 Ill. 451.

Of contributory negligence—riding on flat car—shown.

C. T. T. R. R. Co. v. Schiavone, 216 Ill. 275.

Of riding on platform of street car—not contributory negligence per se.

C. C. Ry. Co. v. McCaughna, 216 Ill. 202.

Of contributory negligence—attempting to enter elevator.

Cullen v. Higgins, 216 Ill. 78.

Of ordinary care—what is.

Christy v. Elliott, 216 Ill. 31.

Of sudden peril—what is.

C. U. T. Co. v. Newmiller, 215 Ill. 383.

Of “turning across street car track”—not negligence per se.

C. U. T. Co. v. Leach, 215 Ill. 184.

Of boarding moving train—not contributory negligence per se.

C. U. T. Co. v. Lundahl, 215 Ill. 289.

Of contributory negligence insufficient—when raising question of law.

C. & E. I. R. R. Co. v. Crose, 214 Ill. 602.

Of contributory negligence of minor—no excuse where statute violated.

American Car & F. Co. v. Armentraut, 214 Ill. 509.

Of contributory negligence—working near ore pile in place of known danger—not shown.

Ill. Steel Co. v. Olste, 214 Ill. 181.

Of contributory negligence—insufficient.

Central Ry. Co. v. Aukiewiez, 213 Ill. 631.

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Of contributory negligence—failure to use safety strap—shown.

Rowe, Admx. v. Taylorville Elec. Co., 213 Ill. 318.

Of ordinary care in seeking to be cured—good.

C. C. Ry. Co. v. Saxby, 213 Ill. 274.

Of ordinary care—turning in front of street car—shown.

Chicago North Shore St. Ry. Co. v. Strathman, 213 Ill. 252.

Of contributory negligence of section hand in not “looking for engine”—not shown.

I. I. & I. R. R. Co. v. Otstal, 212 Ill. 429.

Of “looking and listening”—held sufficient.

C. & E. I. R. R. Co. v. Coggins, 212 Ill. 369.

Of standing on platform—when not contributory negligence.

C. & W. I. R. R. Co. v. Newell, 212 Ill. 332.

Of contributory negligence—not as matter of law.

Shickle-Harrison & H. Iron Co. v. Beck, 212 Ill. 268.

Of contributory negligence crossing railroad tracks—insufficient.

C. & E. I. R. R. Co. v. Schmitz, 211 Ill. 446.

Of contributory negligence in getting off street car—insufficient.

C. U. T. Co. v. Hawthorn, 211 Ill. 367.

Of contributory negligence—failure to look and listen not per se.

C. U. T. Co. v. O'Donnell, 211 Ill. 349.

Of contributory negligence—insufficient.

Henrietta Coal Co. v. Campbell, 211 Ill. 216.

Of contributory negligence in getting off car—insufficient.

C. U. T. Co. v. Olsen, 211 Ill. 255.

Of contributory negligence—when making it question of law.

Wilson v. I. C. R. R. Co., 210 Ill. 603.

Of contributory negligence—under Mine Act—no force.

Spring Valley Coal Co. v. Patting, 210 Ill. 342.

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Of contributory negligence—insufficient.

Ill. Ter. R. R. Co. v. Thompson, 210 Ill. 226.

Of contributory negligence—electric wire—insufficient.

Commonwealth Elec. Co. v. Melville, 210 Ill. 70.

Of contributory negligence working in unusual place insufficient.

C. W. & V. Coal Co. v. Moran, 210 Ill. 9.

Of gross negligence—does not excuse contributory negligence.

C. W. & V. Coal Co. v. Moran, 210 Ill. 9.

Of contributory negligence—not sufficient.

C. C. Ry. Co. v. Gemmill, 209 Ill. 638.

Of contributory negligence—going under car to repair—sufficient.

C. & A. R. R. Co. v. Pettit, 209 Ill. 452.

Of reasonable care—what is.

C. U. T. Co. v. Chugren, 209 Ill. 429.

Of contributory negligence failure to “look back” insufficient.

C. C. Ry. Co. v. Barker, 209 Ill. 321.

That plaintiff used due care in sudden peril good.

Siegel, Cooper & Co. v. Norton, 209 Ill. 201.

Of contributory negligence—when not making it question of law.

I. C. R. R. Co. v. Sheffner, 209 Ill. 9.

Of contributory negligence insufficient.

C. & A. R. R. Co. v. Pulliam, 208 Ill. 456.

Of failure to “look and listen” not negligence per se.

Barnett & Record Co. v. Schlapka, 208 Ill. 426.

Of turning onto car track not negligence per se.

Barnett & Record Co. v. Schlapka, 208 Ill. 426.

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Of ordinary care before and at time of injury—instruction good.

C. C. Ry. Co. v. O'Donnell, 208 Ill. 267.

Of contributory negligence insufficient.

C. & A. R. R. Co. v. Howell, 208. Ill. 155.

Variance in cannot be first raised in appellate court.

Pressed Steel Co. v. Herath, 207 Ill. 576.

Of contributory negligence no bar if statute is violated.

Riverton Coal Co. v. Shepherd, 207 Ill. 395.

Of reasonable care by plaintiff sufficient.

Riverton Coal Co. v. Shepherd, 207 Ill. 395.

Of riding on foot-board of street car not contributory negligence.

C. C. Ry. Co. v. Creech, 207 Ill. 400.

Of ordinary care questionable.

I. C. R. R. Co. v. Wade, 206 Ill. 523.

Of contributory negligence in working with ragged rope under orders—not.

Ill. Steel Co. v. Wierzbicky, 206 Ill. 201.

Of contributory negligence insufficient.

Missouri Mall. I. Co. v. Dillon, 206 Ill. 145.

That plaintiff's negligence contributed to injury, required.

Ehlen v. O'Donnell, 205 Ill. 38.

Of contributory negligence, sufficient.

O'Donnell v. McVeagh, et al., 205 Ill. 23.

Of contributory negligence, insufficient.

P. C. C. & St. L. R. R. Co. v. Robson, 204 Ill. 254.

Of contributory negligence sufficient.

Trakal v. Huesner Baking Co., 204 Ill. 179.

Of contributory negligence—sufficient—switchman killed.

C. I. & L. Ry. Co. v. Barr, 204 Ill. 163.

Of contributory negligence—bicyclist hit by street car.

N. C. St. Ry. Co. v. Cossar, 203 Ill. 608.



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Of failure to look and listen—not negligence per se.

Chicago Junction Ry. Co. v. McGrath, 203 Ill. 511.

Proving contributory negligence—and that proving assumed risk—distinguished.

C. & E. I. R. R. Co. v. Heerey, 203 Ill. 492.

Of ordinary care—sufficient—buggy hit by street car.

N. C. St. Ry. Co. v. Rodert, 203 Ill. 413.

Of contributory negligence—insufficient—switchman injured.

C. & A. R. R. Co. v. Ralidy, 203 Ill. 310.

Of contributory negligence turning in front of street car when not.

N. C. St. Ry. Co. v. Irwin, 202 Ill. 345.

Of boarding moving car on advice of conductor not negligence per se.

C. & A. R. R. Co. v. Gore, 202 Ill. 188.

Of contributory negligence in boarding moving train—not.

C. & A. R. R. Co. v. Flaherty, 202 Ill. 151.

Of contributory negligence by child—not good.

True & True Co. v. Woda, 201 Ill. 315.

Of boarding car at unusual place not contributory negligence per se.

South Chicago C. Ry. Co. v. Dufresne, 200 Ill. 456.

Of negligence of parent—not sufficient—lumber pile fell on child.

True & True Co. v. Woda, 201 Ill. 315.

Of contributory negligence—not sufficient—elevator accident.

Slack v. Harris, 200 Ill. 96.

As to due care—surroundings may be shown.

St. L. National Stock Co. v. Godfrey, 198 Ill. 288.

That the other brake on the car was out of repair good as bearing on due care.

St. L. P. & N. Ry. Co. v. Dorsey, 189 Ill. 251.

Of conditions surrounding injury good as relating to due care.

Village of Cullom v. Justice, 161 Ill. 372.

#### **h. As to Rules and Customs.**

Cutsum of crawling under car may be shown—living car of laborers on sidetrack.

I. C. R. R. Co. v. Panebiango, 227 Ill. 170

Of custom of giving warning of switching cars—good.

C. & E. I. R. R. Co. v. Kimmel, 221 Ill. 547.

Of rules of company known to motorman—good.

C. C. Ry. Co. v. McDonough, 221 Ill. 69.

That servants knew rules—not evidence of negligence.

C. C. Ry. Co. v. Lowitz, 218 Ill. 26.

Of custom of passengers getting off at unusual place—good.

C. C. Ry. Co. v. Lowitz, 218 Ill. 26.

Of custom of stopping car at unusual place—good.

C. C. Ry. Co. v. Lowitz, 218 Ill. 26.

Of copy of rules showing rule to stop at crossings.

C. C. Ry. Co. v. Lowitz, 218 Ill. 26.

Of usual method of doing work—good.

Leighton, etc., Steel Co. v. Snell, 217 Ill. 152.

Of record of weather bureau—press copy of report—good.

C. & E. I. R. R. Co. v. Zapp, 209 Ill. 339.

Of customary way of running street cars—good.

N. C. St. Ry. Co. v. Irwin, 202 Ill. 345.

Of custom of street car to stop at unusual place.

S. C. C. Ry. Co. v. Dufresne, 200 Ill. 456.

That railroad company induced public to board train at unusual place—good.

C. & W. I. R. R. Co. v. Doan, 195 Ill. 168.

That guards on emery wheels are in general use—improper.

*Ide v. Fratcher*, 194 Ill. 552.

Of custom that contractor does not furnish scaffolding—good.

*McBeath v. Rawle*, 192 Ill. 626.

Of custom of asking for mine props—good.

*Donk Bros. Coal Co. v. Peton*, 192 Ill. 41.

That mine owner did not provide props in the place customary to have them—good.

*Mount Olive Coal Co. v. Rademacher*, 190 Ill. 538.

Of customary method of track construction.

*Lake Erie & W. Ry. Co. v. Wilson*, 189 Ill. 89.

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*W. C. St. Ry. Co. v. Torpe*, 187 Ill. 610.

Of custom of boarding moving car with conductor's consent when good and for what purposes.

*N. C. St. Ry. Co. v. Kaspers*, 186 Ill. 246.

Of post office rules where mail clerk killed—competent.

*C. & A. R. R. Co. v. Kelly*, 182 Ill. 267.

Of custom of use of track by public—bad.

*Wabash R. R. Co. v. Jones*, 163 Ill. 167.

Parole of company's rule—competent.

*St. L. A. & T. H. R. R. Co. v. Bauer*, 156 Ill. 106.

Evidence of schedule time for cars as showing speed admissible.

*Central Ry. Co. v. Allmon*, 147 Ill. 471.

Evidence that bridge was lower than customary—incompetent—question is was bridge as built dangerous.

*C. C. C. & St. L. Ry. Co. v. Walter*, 147 Ill. 60.

Evidence—rules as to running trains—when good.

*C. M. & St. P. Ry. Co. v. O'Sullivan*, 143 Ill. 48.

Evidence—rules of railroad company—competent—for what purpose.

L. S. & M. S. Ry. Co. v. Ward, 135 Ill. 511.

Of custom of passengers riding on engines—competent.

L. S. & M. S. Ry. Co. v. Brown, 123 Ill. 163.

As to customary duties of servant when error to refuse.

C. & A. R. R. Co. v. Bragonier, 119 Ill. 51.

Of custom of another railroad in switching—immaterial.

Rolling Mill Co. v. Johnson, 114 Ill. 59.

Evidence of custom of switching—error to refuse.

Pennsylvania Co. v. Stoelke, Admr., 104 Ill. 201.

As to customary way of constructing tracks—when good.

Pennsylvania Co. v. Hankey, 93 Ill. 580.

Rules of railroad company—force of as evidence.

C. B. & Q. R. R. Co. v. McLallen, 84 Ill. 109.

Rule of railroad company as to purchase of ticket held to be proper.

Pullman Palace Car Co. v. Reed, 75 Ill. 125.

Rules of railroad company—power to make—force of.

C. & N. W. Ry. Co. v. Williams, 55 Ill. 185.

Evidence of rule of setting apart car for ladies—proper.

C. & N. W. Ry. Co. v. Williams, 55 Ill. 185.

### **i. On Damages.**

(See also DAMAGES.)

#### **In general.**

Other damage done by same cause—good.

Richardson & Nelson, 221 Ill. 254.

By son of plaintiff that plaintiff complained of pain—bad.

C. C. Ry. Co. v. Lowitz, 218 Ill. 26.

General statement of plaintiff's condition.

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That improper care caused disease—when bad.

The Gumming System v. Lapointe, 212 Ill. 274.

As to excessive damages.

The Chicago Union T. Co. v. Miller, 212 Ill. 49.

Of plaintiff's condition—non expert—when good.

C. C. Ry. Co. v. Bundy, 210 Ill. 39.

Of plaintiff's condition—her own statements—when good.

C. C. Ry. Co. v. Bundy, 210 Ill. 39.

As to excessive damages—not reviewed in supreme.

C. C. Ry. Co. v. Mead, 206 Ill. 174.

Of damages in case by minor—what proper.

Chicago Screw Co. v. Weiss, 203 Ill. 536.

Of age of minor injured—proper.

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After default—to reduce damages—proper by surety of saloonkeeper.

Wanack v. People, 187 Ill. 116.

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N. C. St. Ry. Co. v. Gillon, 166 Ill. 444.

Evidence of inability to secure work—incompetent.

Weber Wagon Co. v. Kehl, 139 Ill. 644.

That damage was aggravated by want of care—good.

H. & St. J. R. R. Co. v. Martin, 111 Ill. 219.

Evidence as to damages may be introduced before evidence that intoxication caused damages.

Paul v. Barnes, 82 Ill. 228.

Evidence that defendant acted on advice of attorney in ejecting tenant is good in mitigation of damages.

Cochrane v. Tuttle, 75 Ill. 361.

As to element of damages.

Of loss of "instruction and moral training"—good.

Goddard v. Enzler, 222 Ill. 462.

That injury developed a latent disease—good. . .

C. U. T. Co. v. May, 221 Ill. 530.

Of average yearly earnings of plaintiff—good.

C. U. T. Co. v. May, 221 Ill. 530.

Of subjective injury—when proper.

C. C. Ry. Co. v. McCaughna, 216 Ill. 202.

Of development of latent disease or weakness—good.

C. C. Ry. Co. v. Saxby, 213 Ill. 274.

Of expenses of litigation as element of damages—bad.

Chicago & Alton R. R. Co. v. Vipond, Admr., 212 Ill. 199.

As to extent of injury from the accident.

Chicago City Ry. Co. v. Uhter, 212 Ill. 174.

New—of other injuries on second trial—good.

W. C. St. Ry. Co. v. Dougherty, 209 Ill. 241.

Of subjective injuries.

C. C. Ry. Co. v. Mead, 206 Ill. 174.

Of culture, education, etc., of parent as element of damage.

N. C. St. Ry. Co. v. Irwin, 202 Ill. 345.

Loss of wages—good under general averment.

Illinois Steel Co. v. Ryska, 200 Ill. 280.

Of miscarriage seven months after injury—good under general averment.

C. C. Ry. Co. v. Cooney, 196 Ill. 466.

As to appearance of pain and suffering endured by plaintiff—good.

Cicero & Proviso St. Ry. Co. v. Priest, 190 Ill. 592.

Of plaintiff's previous health—when good.

W. C. St. Ry. Co. v. Kennelly, 170 Ill. 508.

As to plaintiff's health before and after injury—good.

W. C. St. Ry. Co. v. Cahill, 165 Ill. 496.

As to income of the plaintiff—when good—under general averment.

C. & E. R. R. Co. v. Meech, 163 Ill. 305.

Evidence as to pain and length of confinement—proper.

N. C. St. Ry. Co. v. Cook, 145 Ill. 551.

Evidence of complaint of pain—good.

City of Bloomington v. Osterle, 139 Ill. 120.

Of injury—what competent.

City of Joliet v. Conway, 119 Ill. 490.

Of “false joint” and failure of bone to unite—good under general averment of damage.

Pullman Palace Car Co. v. Bluhm, 109 Ill. 20.

What improper on damages under Dram Shop Act case.

Flynn v. Fogarty, 106 Ill. 263.

Of loss of profits of particular business—incompetent without special averment.

City of Bloomington v. Chamberlain, 104 Ill. 268.

Evidence by defense—previous health of plaintiff.

Village of Warren v. Wright, 103 Ill. 298.

Evidence—of plaintiff's pecuniary condition—bad.

Eagle Packet Co. v. Defries, 94 Ill. 598.

### **As to earnings, profits, etc.**

Of earning capacity—what good—ten years before bad.

C. & J. Elec. Co. v. Spence, 213 Ill. 220.

Of profits or special earnings—only under special averment.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Of wages—good under general averment.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

As to earning capacity—wages, prior work—good.

W. C. St. Ry. Co. v. Dougherty, 209 Ill. 241.

Of wages of plaintiff—time of injury—good under general averment.

Illinois Steel Co. v. Ryska, 200 Ill. 280.

As to earning capacity of men on same job—proper..

Ill. Steel Co. v. Ostrowsky, 194 Ill. 376.

Of earnings at work five years before injury—incompetent..

W. C. St. Ry. Co. v. Maday, 188 Ill. 308.

Of earnings to show damage—when good.

Village of Chatsworth v. Rowe, 166 Ill. 114.

Evidence as to earning capacity—average—competent.

C. & E. I. R. R. Co. v. Bivans, 142 Ill. 402.

**Of condition of next of kin—and of plaintiff.**

Proof that plaintiff had a wife and children is reversible error.

Jones & Adams Co. v. George, 227 Ill. 64.

Of number of children in family where boy was injured—immaterial.

C. R. I. & P. Ry. Co. v. Steckman, 224 Ill. 500.

Of dependence on deceased—proper—elements of damage what may be shown.

Of widow that deceased supported family—good.

P. C. C. & St. L. Ry. Co. v. Kinnare, Admr., 203 Ill. 388.

As to children of deceased—when proper.

Ill. Steel Co. v. Ostrowsky, 194 Ill. 376.

That deceased supported plaintiff—good.

St. L. P. & N. Ry. Co. v. Dorsey, 189 Ill. 251.

As to condition of kindred of deceased—bad.

C. P. & St. L. R. R. Co. v. Woodridge, 174 Ill. 330.

That deceased left widow and children dependent on him—good.

Swift & Co. v. Foster, 163 Ill. 51.

Evidence that deceased had dependent family—bad except where death is caused.

Pennsylvania Co. v. Keane, Admx., 143 Ill. 172.



Evidence as to dependence—good.

McMahon v. Sankey; 133 Ill. 637.

That wife depended on husband for support—good.

Mayers v. Smith, 121 Ill. 442.

Of pecuniary condition of defendant—competent.

Mullen et al. v. Spangenberg, 113 Ill. 140.

That deceased supported family—good.

C. & A. R. R. Co. v. May, Admx., 108 Ill. 288.

That wife and child dependent on deceased—incompetent.

C. B. & Q. R. R. Co. v. Johnson, Admr., 103 Ill. 512.

C. & N. W. Ry. Co. v. Moranda, 93 Ill. 302.

Evidence to reduce damages by showing next of kin not dependent—proper.

Quincy Coal Co. v. Hoop, 77 Ill. 68.

Evidence that plaintiff had a family and was unable to support them since injury—incompetent.

P. Ft. W. & C. Ry. Co. v. Powers, 74 Ill. 341.

Evidence as to plaintiff's family and their condition improper.

City of Chicago v. O'Brennan, 65 Ill. 160.

Pecuniary condition of plaintiff—mother of deceased—good to show dependence.

City of Chicago v. Powers, Admx., 42 Ill. 169.

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Of attending physician—neuresthenia.

Elgin, A. & S. T. Co. v. Wilson, 217 Ill. 47.

Of physician as to value of his services good.

C. & A. R. R. Co. v. Wise, 206 Ill. 453.

Of physician as to who paid his bill—when bad.

Quincy Gas & Elec. Co. v. Banman, 203 Ill. 295.

Of complaint of pain by plaintiff to doctor—when good.

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Of physician as to injury good under general averment.

C. & A. R. R. Co. v. McDonnell, 194 Ill. 82.

Of physician as to his charge good.

W. C. St. Ry. Co. v. Carr, 170 Ill. 478.

Of probable cost of operation not performed—bad.

C. C. Ry. Co. v. Henry, 218 Ill. 93.

Of medical attendance what proper.

C. C. Ry. Co. v. Henry, 218 Ill. 93.

Of doctor's bill where he does not know who is to pay.

C. & A. R. R. Co. v. Wise, 206 Ill. 453.

### **As to exemplary damages.**

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Of evil intent—basis for exemplary damages—good.

C. R. I. & P. R. R. Co. v. Hamler, 215 Ill. 525.

Evidence upon which exemplary damages may be based.

Betting et al. v. Hobbett, 142 Ill. 72.

### **j. Declarations, Statements, etc., as.**

Statement of foreman after injury when bad.

Baier v. Selke, 211 Ill. 512.

Of declaration in plaintiff's hearing plaintiff not denying—good.

C. C. Ry. Co. v. Bundy, 210 Ill. 39.

Of request to conductor to stop car—good.

C. C. Ry. Co. v. Bundy, 210 Ill. 39.

Rebutting evidence of declarations in plaintiff's presence good.

C. C. Ry. Co. v. Bundy, 210 Ill. 39.

Of plaintiff's declaration of physician after three years bad.

C. & E. I. R. R. Co. v. Donworth, 203 Ill. 192.

Of admission of superintendent not good.

C. & E. I. R. R. Co. v. Rains, Admx., 203 Ill. 417.

Of conversation of conductor with passenger good.

C. & A. R. R. Co. v. Gore, 202 Ill. 188.

Of conversation between plaintiff and brakeman good.

C. & A. R. R. Co. v. Flaherty, 202 Ill. 151.

Conversation about injury after accident.

Springfield C. Ry. Co. et al. v. Puntenny, 200 Ill. 9.

Declarations of plaintiff as to pain when good.

W. C. St. Ry. Co. v. Carr, 170 Ill. 478.

W. C. St. Ry. Co. v. Kennelly, 170 Ill. 508.

Evidence of directions given by superintendent to foreman, incompetent.

Consolidated Ice Mch. Co. v. Kelfer, 134 Ill. 481.

If part of conversation is allowed all must be admitted.

C. R. I. & P. Ry. Co. v. Eininger, 114 Ill. 79.

Of intoxication by declaration of third person—incompetent.

L. E. & W. Ry. Co. v. Zaffinger, 107 Ill. 199.

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C. & N. W. Ry. Co. v. Button, 68 Ill. 409.

Declarations of defendant's agent—when admissible.

C. B. & Q. Ry. Co. v. Lee, 60 Ill. 501.

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C. & N. W. Ry. Co. v. Fillmore, 57 Ill. 265.

Dying declarations of person injured are not admissible as evidence in a damage case.

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### **k. As to Duty of Defendant or Plaintiff.**

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Of duty of conductor to know passengers have alighted.

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Of duty to warn of turning on of electricity insufficient.

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C. & A. R. R. Co. v. Wise, 206 Ill. 453.

Of duty and failure to furnish safe place sufficient.

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### **I. As to Equal Means of Knowledge.**

(See also EQUAL MEANS OF KNOWLEDGE.)

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C. & E. I. R. R. Co. v. Crose, 214 Ill. 602.

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Clothing worn at time of injury good.

Quincy Gas & Elec. Co. v. Bauman, 203 Ill. 295.

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Exhibiting wound to jury not error.

C. T. T. R. R. Co. v. Kotoski, 199 Ill. 383.

Exhibiting injury to jury discretionary.

Swift & Co. v. Rutkowski, 182 Ill. 18.

Exhibiting injury to jury when proper.

C. & A. R. R. Co. v. Clausen, 173 Ill. 100.

Experiments made before the jury when proper.

Pennsylvania Coal Co. v. Kelly, 156 Ill. 9.

Experiments after injury not competent.

Libby, McNeil & Libby v. Scherman, 146 Ill. 541.

Evidence—clothing torn in the accident—discretion of court.

Tudor Iron Works v. Weber, 129 Ill. 535.

**o. Of Expert Witness.**

(See also WITNESSES.)

Opinion of physician as to cause of injury—when good.

City of Chicago v. Didier, 227 Ill. 571 (208 Ill. 608 distinguished).

**Expert when not invading province of jury.**

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**Expert when based on facts.**

Goddard v. Enzler, 222 Ill. 462.

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**Expert, as to mines—rules as to.**

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**Of physician as to a blow causing tuberculosis good.**

C. C. Ry. Co. v. Saxby, 213 Ill. 274.

**Expert as to how fast it is safe to run train immaterial.**

Chicago & W. I. R. Co. v. Newell, 212 Ill. 332.

**Asking physician on cross-examination as to other cases bad.**

C. & E. I. R. R. Co. v. Schuntz, 211 Ill. 446.

**Of facts of ordinary observation—what are—who may prove.**

Henrietta Coal Co. v. Campbell, 211 Ill. 216.

**Of cause of explosion what is.**

I. C. R. R. Co. v. Puckett, Admx., 210 Ill. 140.

**Hypothetical questions to physician rules as to.**

C. C. Ry. Co. v. Bundy, 210 Ill. 39.

**Of speed of car how far non-expert is good.**

C. C. Ry. Co. v. Bundy, 210 Ill. 39.

**Of physician as to how injury might have occurred incompetent.**

I. C. R. R. Co. v. Smith, 208 Ill. 608.

That physician is regularly employed by defendant good on cross-examination.

C. C. Ry. Co. v. Handy, 208 Ill. 81.

Expert not required to prove common observation—explosion.

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Hypothetical question when bad.

C. & A. R. R. Co. v. Howell, 208 Ill. 155.

Of expert as to plaintiff's "feigning" when good.

C. U. T. Co. v. Fortier, 205 Ill. 305.

That physician was paid by defendant to make examination of plaintiff for purpose of testifying—good.

Wrisley Co. v. Burke, 203 Ill. 250.

Of physician as to plaintiff's "hearing" when bad.

C. & E. I. R. R. Co. v. Donworth, 203 Ill. 192.

Hypothetical question full discussion of.

C. & E. I. R. R. Co. v. Wallace, 202 Ill. 129.

Hypothetical question when may embody part of evidence.

C. & E. I. R. R. Co. v. Wallace, 202 Ill. 129.

Hypothetical questions what must include.

C. & E. I. R. R. Co. v. Wallace, 202 Ill. 129.

Expert—of miner as to props required—good.

Donk Bros. Coal & C. Co. v. Stroff, 200 Ill. 488.

Hypothetical question including circumstantial evidence approved.

Economy L. & P. Co. v. Sheridan, Admr., 200 Ill. 439.

Expert as to effect of changes in machinery good.

Slack v. Harris, 200 Ill. 96.

Expert—scope of—foundation for.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9.

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Expert as to person living after being struck by engine.

C. & A. R. R. Co. v. Lewandowski, 190 Ill. 301.

**Expert when not required.**

*C. & A. R. R. Co. v. Lewandowski*, 190 Ill. 301.

**Of physician as to how injury might have been caused good.**

*Shorb v. Webber*, 188 Ill. 126.

**Expert that injury might have occurred in manner suggested proper.**

*I. C. R. R. Co. v. Treat*, 179 Ill. 576.

**As to speed of train expert not required.**

*C. B. & Q. R. R. Co. v. Gunderson*, 174 Ill. 496.

**Hypothetical—when facts not in evidence may be basis for question.**

*W. C. St. Ry. Co. v. Fishman*, 169 Ill. 196.

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*City of Chicago v. Seben*, 165 Ill. 371.

**Of expert bad as to matters of common knowledge.**

*Hughes v. Richter*, 161 Ill. 409.

**Non-expert of plaintiff's mental condition as shown by their observation of him good.**

*N. Y. C. & St. L. R. R. Co. v. Luebeck*, 157 Ill. 595.

**Expert evidence when not necessary—to prove drunkenness.**

*Demick v. Downs*, 82 Ill. 570.

**Of physician as to effect of injury good.**

*Springfield C. Ry. Co. v. Welsch*, 155 Ill. 511.

### **p. As to Exclusion of.**

**Exclusion of must be harmful.**

*Chicago City Ry. Co. v. Shaw*, 220 Ill. 532.

**Excluding after rebuttal by defendant bad.**

*C. & E. I. R. R. Co. v. Schuntz*, 211 Ill. 446.

**Exclusion of cured by proof of same fact, otherwise.**

*Illinois Steel Co. v. Ryska*, 200 Ill. 280.



**Exclusion of proper when not harmful.**

Ashley Wire Co. v. Mercier, 163 Ill. 486.

**Exclusion of on motion cures erroneous admission of.**

C. & E. R. R. Co. v. Meech, 163 Ill. 305.

**Exclusion of when not reversible error.**

Union Rendering Co. v. Kreft, 159 Ill. 381.

**Exclusion on motion cures erroneous admission of.**

C. & G. T. Ry. Co. v. Gallinowski, 155 Ill. 189.

**Error in excluding cured if same otherwise put in.**

Tudor Iron Works v. Weber, 129 Ill. 535.

**Improperly admitted—cured by excluding.**

C. & A. R. R. Co. v. Fletsam, 123 Ill. 518.

#### **r. As to Fellow-Servants.**

(See also FELLOW-SERVANTS.)

**Of fellow-servantship—steel blower and workman not.**

Illinois Steel Co. v. Ziemkowski, 220 Ill. 324.

**Of fellow-servantship—carpenter and craneman not.**

National E. & S. Co. v. McCorkle, 219 Ill. 557.

**Of fellow-servantship none in the case.**

Stegel, Cooper & Co. v. Trcka, 218 Ill. 559.

**Of fellow-servantship—conductor and motorman—held sufficient.**

C. U. T. Co. v. Sawusch, 218 Ill. 130.

**Of fellow-servantship conductor and barn-boss held not.**

C. U. T. Co. v. Sawusch, 218 Ill. 130.

**Of fellow-servantship craneman and molder not.**

Leighton, etc., Steel Co. v. Snell, 217 Ill. 152.

**Of fellow-servantship bottom-cager and miner not.**

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Of fellow-servantship section hand and engineer not shown.

I. I. & I. R. R. Co. v. Otstol, 212 Ill. 429.

Of fellow-servantship craneman and apprentice insufficient.

Shickle-Harrison & H. Iron Co. v. Beck, 212 Ill. 268.

Of fellow-servantship conductor and fireman not sufficient.

Rogers, Admx. v. C. C. C. & St. L. Ry. Co., 211 Ill. 126.

That foreman is fellow-servant of workmen what is.

Baier v. Selke, 211 Ill. 512.

Of fellow-servantship foreman and workman insufficient.

Illinois So. Ry. Co. v. Marshall, Admr., 210 Ill. 562.

Of fellow-servantship when making it question of law.

Illinois So. Ry. Co. v. Marshall, Admr., 210 Ill. 562.

Of fellow-servantship engineer and miner insufficient.

Spring Valley Coal Co. v. Patting, 210 Ill. 342

Of fellow-servantship doctrine as to.

C. & E. I. R. R. Co. v. White, Admr., 209 Ill. 124.

Of fellow-servantship engineer and brakeman shown.

C. & A. R. R. Co. v. Bell, 209 Ill. 25.

Of fellow-servantship work outside of duty—insufficient.

Grace & Hyde Co. v. Probst, 208 Ill. 147.

Of fellow-servants held sufficient—discussion.

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Consolidated Coal Co. of St. L. v. Fleischbein, Admr., 207 Ill. 593.

Of driver and miner, as fellow-servants insufficient.

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C. & E. I. R. R. Co. v. Driscoll, Admx., 207 Ill. 9.

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*Eldorado Coal Co. v. Swan*, 227 Ill. 586.

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*C. C. Ry. Co. v. Lowitz*, 218 Ill. 26.

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*C. C. Ry. Co. v. Matthieson*, 212 Ill. 292.

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*C. C. Ry. Co. v. Matthieson*, 212 Ill. 292.

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*C. C. Ry. Co. v. Matthieson*, 212 Ill. 292.

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*C. C. Ry. Co. v. Matthieson*, 212 Ill. 292.

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*C. C. Ry. Co. v. Bundy*, 210 Ill. 39.

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*I. C. R. R. Co. v. Wade*, 206 Ill. 523.

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### **y. As to Knowledge.**

(See also KNOWLEDGE OF DANGER.)

Of knowledge by plaintiff of unsafe condition shown.

McCormick Harvesting Mch. Co. v. Zakzewski, 220 Ill. 522.

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Elgin, J. & E. Ry. Co. v. Hoodley, Admx., 220 Ill. 463.

Of knowledge of defect and danger by plaintiff shown.

Montgomery Coal Co. v. Barringer, 218 Ill. 327.

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### **z. On Motion to Instruct.**

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**2-2. As to Negligence of Defendant.**

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(See MASTER AND SERVANT—DEFECTIVE MACHINERY.)

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Illinois Steel Co. v. Wierzbicky, 206 Ill. 201.

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Kellyville Coal Co. v. Strine, 217 Ill. 516.

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C. W. & V. Coal Co. v. Moran, 210 Ill. 9.

Of violation of Mine Act employing minor.

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Odin Coal Co. v. Denman, 185 Ill. 413.

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*Siegel, Cooper & Co. v. Trcka*, 218 Ill. 559.

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*C. U. T. Co. v. Sawusch*, 218 Ill. 130.

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*C. U. T. Co. v. Leach*, 215 Ill. 184.

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*Christy v. Elliott*, 216 Ill. 31.

Of joint negligence master and fellow-servant.

*C. & A. R. R. Co. v. Bell*, 209 Ill. 25.

Of joint negligence of master and fellow-servant—force of.

*C. & A. R. R. Co. v. Wise*, 206 Ill. 453.

Of joint negligence of master and fellow-servant—hole in floor.

*Missouri Mall. Iron Co. v. Dixon*, 206 Ill. 145.

Of joint negligence—sufficient.

*Economy L. & P. Co. et al. v. Miller*, 203 Ill. 518.

Of joint negligence of master and fellow-servant—master held.

*Armour v. Golkowska*, 202 Ill. 144.

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*Springfield C. Ry. Co. et al. v. Puntenny*, 200 Ill. 9.

**Of railroad companies.**

(See also RAILROAD ACCIDENT CASES.)

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*Elgin, J. & E. Ry. Co. v. Hoodley, Admx.*, 220 Ill. 463.

- Of defendant's negligence failure to keep coupler in repair.  
C. & A. Ry. Co. v. Walters, 217 Ill. 87.
- Of defendant's negligence rapid speed of excursion train.  
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C. & E. I. R. R. Co. v. Kelly, 212 Ill. 506.
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I., I. & I. R. R. Co. v. Otstot, 212 Ill. 429.
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Ill. Terminal R. Co. v. Thompson, 210 Ill. 226.
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- That draw-bar of car defective—good repair count.  
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C. & A. R. R. Co. v. Howell, 208 Ill. 155.
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C. C. Ry. Co. v. O'Donnell, Admr., 207 Ill. 478.
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- Of violation of statute not stopping at crossing insufficient.  
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Of defendant's negligence in failing to provide proper "coupling."

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Of defendant's negligence allowing obstructions on depot platform.

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### Of street railway companies.

(See also RAILWAY ACCIDENTS.)

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Chicago City Ry. Co. v. Shaw, 220 Ill. 532.

Of defendant's negligence in starting car before passenger got off.

W. C. St. Ry. Co. v. McCafferty, 220 Ill. 476.

Of negligence of "barn-boss"—master liable.

C. U. T. Co. v. Sawusch, 218 Ill. 130.

Of defendant's negligence suddenly starting car

C. C. Ry. Co. v. Lowitz, 218 Ill. 26.

Of defendant's negligence in starting car passenger getting off.

C. U. T. Co. v. Rosenthal, 217 Ill. 453.

Of defendant's negligence—street car ran into wagon.

C. U. T. Co. v. Jacobson, 217 Ill. 404.

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Chicago City Ry. Co. v. Schmidt, 217 Ill. 396.

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Of running at high speed in city limits.

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Of negligence in placing elevated structure near pole.

South Side Elevated Ry. Co. v. Nesvig, 214 Ill. 463.

Of running into wagon by street car—when not actionable.

C. U. T. Co. v. Leach, 215 Ill. 184.

Of negligence of running into wagon on track—viaduct.

Chicago City Ry. Co. v. Bennett, 214 Ill. 26.

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C. C. Ry. Co. v. Lannon, 212 Ill. 477.

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C. C. Ry. Co. v. Gemmill, Admr., 209 Ill. 638.

Of carelessness in losing control of electric car good.

C. C. Ry. Co. v. Barker, Admr., 209 Ill. 321.

Of negligence in suddenly starting car.

N. C. St. Ry. Co. v. Wellner, 206 Ill. 272.

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C. C. Ry. Co. v. McMeen, 206 Ill. 108.

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N. C. St. Ry. Co. v. Polkey, Admr., 203 Ill. 225.

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N. C. St. Ry. Co. v. Polkey, Admr., 203 Ill. 225.

Of motoneer's negligence sufficient.

N. C. St. Ry. Co. v. Irwin, 202 Ill. 345.

Of defendant's negligence failure to put guards between "L" cars.

Lake St. "L" R. R. Co. v. Burgess, 200 Ill. 628.

Of failure to stop on signal not negligence.

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**In failing to warn of danger.**

(See DUTY TO GUARD AGAINST INJURY.)

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C. C. Ry. Co. v. McCaughna, 216 Ill. 202.

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Spring Valley Coal Co. v. Chlaventone, 214 Ill. 314.

Of negligence of failing to warn of danger.

M. & O. R. R. Co. v. Vallowe, 214 Ill. 124.

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Shickle-Harrison & H. Iron Co. v. Beck, 212 Ill. 268.

Of defendant's negligence in failing to warn. Ring bell.

C. & E. I. R. R. Co. v. Schuntz, 211 Ill. 446.

Of failure to warn of danger shown.

Rogers, Admx., v. C. C. C. & St. L. Ry. Co., 211 Ill. 126.

Of failure to warn of danger sufficient.

Grace & Hyde Co. v. Probst, 208 Ill. 147.

Of foreman's negligence failing to warn of danger.

Pressed Steel Co. v. Herath, Admr., 207 Ill. 576.

Of failure to warn of uncovered shafting.

Morris & Co. v. Malone, Admx., 200 Ill. 132.

**In construction and operation of elevators.**

(See ELEVATOR CASES.)

Of landlord's negligence failure to light elevator shaft.

Shoninger Co. v. Mann, 219 Ill. 242.

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Siegel, Cooper & Co. v. Norton, 209 Ill. 201.

Of defendant's duty and negligence—elevator—insufficient.

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Of defendant's negligence—improper construction of elevator shaft.

Beldler et al., Admrs., v. Branshaw, Admx., 200 Ill. 425.

**z-3. As to Notice of Defect or Danger.**

(See also NOTICE.)

Of notice, actual and constructive—sidewalk.

City of Mattoon v. Faller, 217 Ill. 273.

Of constructive notice of defect.

C. & A. Ry. Co. v. Walters, 217 Ill. 87.

Of notice of defect to machine boss, notice to master.

Odin Coal Co. v. Tadlock, 216 Ill. 624.

Of notice to landlord of defect in stairway insufficient.

Burke v. Hulett, Admr., 216 Ill. 545.

When notice to master of defect will be presumed.

Franke v. Hanly, 215 Ill. 216.

Of constructive notice of pole in alley six years—shown.

South Side Elevated Ry. Co. v. Nesvig, 214 Ill. 463.

Of notice of defect—prior accidents are not.

M. & O. R. R. Co. v. Vallowe, 214 Ill. 124.

Of constructive notice to city—condition existing 10 A. M. to 8:30 P. M. good.

City of Ottawa v. Hayne, 214 Ill. 45.

Of notice to conductor of desire to get off sufficient.

C. U. T. Co. v. Hawthorn, 211 Ill. 367.

Of notice to defendant through servant sufficient.

Rogers, Admx., v. C. C. C. & St. L. Ry. Co., 211 Ill. 126.

Of constructive notice—four years in same condition.

Illinois Terminal R. Co. v. Thompson, 210 Ill. 226.

Of notice to defendant of defective roof.

C. W. & V. Coal Co. v. Moran, 210 Ill. 9.

Of notice of latent danger to master sufficient.

Barnett & Record Co. v. Schlapka, 208 Ill. 426.

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Of notice to servant—equal means of knowing—insufficient.  
*Barnett & Record Co. v. Schlapka*, 208 Ill. 426.

(See also EQUAL MEANS OF KNOWLEDGE.)

Of notice to fire-boss of mine, not to owner.  
*Riverton Coal Co. v. Shepherd*, 207 Ill. 395.

Of notice of defect to defendant sufficient.  
*Missouri Mall. Iron Co. v. Dillon*, 206 Ill. 145.

Of notice direct and constructive sufficient.  
*Momence Stone Co. v. Turrell*, 205 Ill. 515.

Of constructive notice sufficient.  
*Economy L. & P. Co. et al. v. Hiller*, 203 Ill. 518.

Notice to master not required, where negligence is of master.  
*Metcalf Co. v. Nystedt*, 203 Ill. 333.

Of constructive notice of defect to defendant good.  
*Metcalf Co. v. Nystedt*, 203 Ill. 333.

Of notice of defects to master what is.  
*Wrisley Co. v. Burke*, 203 Ill. 250.

Of notice of defect to plaintiff what is not.  
*Wrisley Co. v. Burke*, 203 Ill. 250.

Of notice to plaintiff of defect insufficient.  
*Metcalf Co. v. Nystedt*, 203 Ill. 333.

Of notice of defect, is not of risk.  
*Slack v. Harris*, 200 Ill. 96.

As to notice of defect to defendant good.  
*Swift & Co. v. Foster*, 163 Ill. 51.

### 2-4. On Motion for New Trial.

(See PRACTICE.)

Counter affidavits on motion for new trial.  
*Springer v. Schultz*, 205 Ill. 144.

New evidence as ground for new trial insufficient.  
*Springer v. Schultz*, 205 Ill. 144.

Of diligence in seeking to secure witness what is.

P. C. C. & St. L. R. R. Co. v. Robson, 204 Ill. 254.

Newly-discovered when not ground for new trial.

C. & E. I. R. R. Co. v. Stewart, 203 Ill. 223.

Of diligence seeking "new evidence."

Springer v. Schultz, 205 Ill. 144.

Failure of plaintiff's doctor to testify when ground for new trial.

P. C. C. & St. L. R. R. Co. v. Robson, 204 Ill. 254.

### **z-5. As to Ownership.**

(See also OWNERSHIP.)

Of ownership of electric wire—not proved as alleged.

Hayes, Admr., v. Chicago Tel. Co., 218 Ill. 414.

Of ownership—reputed ownership of track good.

C. & E. I. R. R. Co. v. Schuntz, 211 Ill. 446.

Asking physician on cross-examination by whom hired and paid—good.

C. & E. I. R. R. Co. v. Schuntz, 211 Ill. 446.

Of ownership—name on engine—sufficient.

E. St. L. Connecting Ry. Co. v. Altgen, 210 Ill. 213.

That railroad yards owned by another company—immaterial.

Illinois Terminal R. Co. v. Thompson, 210 Ill. 226.

Of ownership—calling of doctor—force of.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Of ownership—name on car—sufficient.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Of possession and control—more important than of ownership.

Ehlen v. O'Donnell, Admr., 205 Ill. 38.

That repairs had been made on sidewalk—good to show ownership.

City of Rock Island v. Starkey, 189 Ill. 515.

Name on car is—of ownership.

P., Ft. W. & C. Ry. Co. v. Callaghan, 157 Ill. 406.

### **z-6. As to Ordinances.**

(See also ORDINANCES.)

Ordinance when admissible as—live wire.

Postal Tel.-Cable Co. v. Likes, 225 Ill. 249.

Of speed ordinance immaterial if not relied on.

Chicago City Ry. Co. v. Shaw, 220 Ill. 532.

Of ordinance to show duty to repair good.

City of Gibson v. Murray, 216 Ill. 589.

Of speed ordinance held not proper—fireman killed.

Chicago & Alton R. R. Co. v. Vipond, 212 Ill. 199.

Of speed ordinance when immaterial—passenger thrown off at curve.

Chicago & W. I. R. Co. v. Newell, 212 Ill. 332.

Speed ordinance admissible if pleaded.

U. S. Brewing Co. v. Stoltenberg, Admr., 211 Ill. 531.

Ordinance admission of, as.

P. C. C. & St. L. R. R. Co. v. Robson, 204 Ill. 254.

Of ordinance requiring rebuilding of sidewalk good.

City of Beardstown v. Clark, 204 Ill. 524.

Ordinance regulating train good as.

C. & A. R. R. Co. v. O'Neill, 172 Ill. 527.

Ordinance as—when good though not specially pleaded.

I. C. R. R. Co. v. Ashline, 171 Ill. 313.

Ordinance when admissible as.

E. St. L. C. Ry. Co. v. Eggman, Admr., 170 Ill. 538.

Ordinance when properly admitted as.

I. C. R. R. Co. v. Crawford, 169 Ill. 554.

Ordinance—regulating speed of trains when good as evidence.

T. W. & W. Ry. Co. v. O'Connor, Admx., 77 Ill. 391.

Ordinance—refusing as—when reversible.

Bibbins v. City of Chicago, 193 Ill. 359.

### **z-7. As to Acting Under Orders.**

(See also ORDERS, WORKING UNDER.)

Of acting under direction of foreman.

Henrietta Coal Co. v. Campbell, 211 Ill. 216.

Conflict of—servant under immediate orders.

Cobb Chocolate Co. v. Knudson, 207 Ill. 452.

### **z-8. Objections and Exceptions to.**

(See also OBJECTIONS.)

Objection to not specific is waived.

Ill. Southern Ry. Co. v. Hayes, 225 Ill. 613.

Must be objected to when offered.

C. U. T. Co. v. May, 221 Ill. 530.

Exception to, rule for saving.

C. C. Ry. Co. v. Henry, 218 Ill. 93.

Objection to, waived by statement of counsel—how.

C. C. Ry. Co. v. McCaughna, 216 Ill. 202.

Exceptions to when and how to be taken.

Feltt, Admx., v. C. C. Ry. Co., 211 Ill. 279.

Special objection to when necessary—scope of.

Ill. Cent. R. R. Co. v. Puckett, Admx., 210 Ill. 140.

General objection to—what raised by.

Ill. Cent. R. R. Co. v. Puckett, Admx., 210 Ill. 140.

Saving exception to not done unless ruling is made.

Quincy Gas & Elec. Co. v. Bauman, 203 Ill. 295.



Exception to must be properly saved or it will not be reviewed.

C. G. & W. Ry. Co. v. Mohan, 187 Ill. 281.

Objection to question already answered—good.

Buck v. Maddock, 167 Ill. 219.

Objection to as “incompetent, immaterial and irrelevant” when too general.

C. & E. R. R. Co. v. Holland, 122 Ill. 461.

Objection to must be specific.

C. & E. I. Ry. Co. v. People, 120 Ill. 667.

Objection to must be specific.

City of Chicago v. Stearns, 105 Ill. 554.

### **2-9. Opinions and Conclusions—Rules as to.**

Opinions—when expert testimony not required

City of Chicago v. McNally, 227 Ill. 14.

Opinion as to cause of injury—by physician—when good.

City of Chicago v. McNally, 227 Ill. 14.

That car was going “full speed” good.

C. C. Ry. Co. v. McDonough, 221 Ill. 69.

By plaintiff “I have been a nervous wreck since” bad.

C. & J. Elec. Ry. Co. v. Patton, 219 Ill. 215.

That “car was overcrowded” bad as a conclusion.

The Chicago Terminal T. Ry. Co. v. O'Donnell, Admr., 213 Ill. 545.

That “horse ran fast and was wild” not a conclusion—good.

C. C. Ry. Co. v. Matthieson, 212 Ill. 292.

Opinion as to what caused conditions shown by the evidence.

Chicago City Ry. Co. v. Uhter, 212 Ill. 174.

Opinion of origin of fire—when proper.

Riverton Coal Co. v. Shepherd, 207 Ill. 395.

What is not opinion of witness.

Wrisley Co. v. Burke, 203 Ill. 250.

Opinion as speed of car based on hearsay bad.

C. & E. I. R. R. Co. v. Donworth, 203 Ill. 192.

Opinion of witness as to plaintiff's health good.

C. & E. I. R. R. Co. v. Randolph, 199 Ill. 126.

Opinions when good by non-expert witness.

W. C. St. Ry. Co. v. Fishman, 169 Ill. 196.

Opinions of witness incompetent.

Brink's Express Co. v. Kinnare, 168 Ill. 643.

Non-expert opinions as to cause of explosion good.

Webster Mfg. Co. v. Mulvanny, 168 Ill. 311.

Statement "I was in danger" bad as a conclusion.

Hoehn v. C. P. & St. L. Ry. Co., 152 Ill. 224.

Opinion as to whether car could have been stopped—good.

C. C. Ry. Co. v. McLaughlin, 146 Ill. 353.

Evidence—opinion of witness—properly refused.

C., M. & St. P. Ry. Co. v. O'Sullivan, 143 Ill. 48.

Evidence—"would have heard bell if ringing"—good.

I. C. R. R. Co. v. Slater, 139 Ill. 190.

Evidence—opinions of witnesses as to safety of a sidewalk inadmissible.

Village of Fairbury v. Rogers, 98 Ill. 554.

Of opinion of witnesses as to speed of train—good.

C., B. & Q. R. R. Co. v. Johnson, Admr., 103 Ill. 512.

Of intoxication—opinion of witness—good.

City of Aurora v. Hillman, 90 Ill. 61.

Opinion of plaintiff as to what he thought—bad.

Sterling Bridge Co. v. Pearl, 80 Ill. 251.

Opinion of expert machinist competent as to safety of machinery.

Camp Point Mfg. Co. v. Ballou, 71 Ill. 417.

Opinion of expert as to whether accident was caused by defects, held properly refused.

*T. P. & W. Ry. Co. v. Conroy*, 68 Ill. 560.

Opinion of medical expert as to whether the accident shown by the evidence would cause the injury—held proper.

*City of Decatur v. Fisher*, 63 Ill. 241.

Opinion of physician that plaintiff will die within a year of injuries—good.

*T. W. & W. R. R. Co. v. Baddeley*, 54 Ill. 19.

### **z-10. Passengers—As to Who Are—Who Are Not.**

(See also PASSENGERS.)

Statement of conductor issuing transfer competent when transfer is refused.

*C. U. T. Co. v. Brethauer*, 223 Ill. 521.

Of passengership what is.

*C. U. T. Co. v. O'Brien, Jr.*, 219 Ill. 303.

That plaintiff had round trip ticket—force of.

*C. & A. R. R. Co. v. Walker*, 217 Ill. 605.

As to passenger after leaving car.

*C. U. T. Co. v. Rosenthal*, 217 Ill. 458.

Of money in pocket to pay fare—good.

*C. U. T. Co. v. Lundahl, Admr.*, 215 Ill. 289.

That plaintiff was a passenger—insufficient.

*Chicago T. T. R. R. Co. v. Schiarone, Admr.*, 216 Ill. 275.

Of finding ticket in deceased's pocket—good.

*E. J. & E. Ry. Co. v. Thomas*, 215 Ill. 158.

That transfer was possessed—sufficient—need not produce.

*C. C. Ry. Co. v. Carroll*, 206 Ill. 318.

Care required of carrier where plaintiff was passenger.

*C. C. Ry. Co. v. Carroll*, 206 Ill. 318.

Of riding on pass in caboose, is not of trespassing.

*I. C. R. R. Co. v. Leiner, Admr.*, 202 Ill. 624.

Of who is a passenger—shown.

Lake St. "L" R. R. Co. v. Burgess, 200 Ill. 628.

Of passengership after alighting—rule as to.

W. C. St. Ry. Co. v. Buckley, 200 Ill. 260.

Tending to show intent to become passenger—when good.

C. & E. I. R. R. Co. v. Huston, 196 Ill. 480.

Of intent to become passenger—when immaterial—declarations as to.

C. & E. I. R. R. Co. v. Chancellor, 165 Ill. 438.

Of contract of passengership outside of ticket—good.

C. & A. R. R. Co. v. Dumser, 161 Ill. 191.

Rate of speed immaterial where passenger was ejected from car.

I. C. R. R. Co. v. Davenport, 177 Ill. 110.

### **z-11. Photos and X-Rays as.**

Photos X-Ray when properly admitted.

C. C. Ry. Co. v. Smith, 226 Ill. 178.

Photos when competent as.

Ill. Southern Ry. Co. v. Hayes, 225 Ill. 613.

X-Ray photo as—taking to jury room not allowed.

C. & J. Elec. Co. v. Spence, 213 Ill. 220.

X-Ray photo as—preliminary proof required.

C. & J. Elec. Co. v. Spence, 213 Ill. 220.

Photos as when good.

C. & E. I. R. R. Co. v. Crose, 214 Ill. 602.

Photos as not competent where it does not appear conditions are same as at time of injury.

Iroquois Furnace Co. v. McCrea, 191 Ill. 340.

Photos as—preliminary proof required.

*Lake Erie & W. Ry. Co. v. Wilson*, 189 Ill. 89.

Evidence—photos—preliminary proof—discretion of court.

*C. C. C. & St. L. Ry. Co. v. Monaghan*, 140 Ill. 474.

Evidence—photos properly refused unless proof made they show status at time of injury.

*C. C. C. & St. L. Ry. Co. v. Monaghan*, 140 Ill. 474.

## **z-12. Practice as to.**

(See also PRACTICE.)

Erroneously admitted evidence may be cured by other evidence in the case.

*Schilling Bros. Co. v. Smith*, 225 Ill. 74.

Weight of, settled by appellate judgment.

*C. & J. Elec. Ry. Co. v. Patton*, 219 Ill. 215.

Weight of, for jury and appellate court.

*C. C. Ry. Co. v. Lowitz*, 218 Ill. 26.

Refusal of—must do harm to reverse.

*Kellyville Coal Co. v. Strine*, 217 Ill. 516.

Admission of some—bar to continuance.

*Kellyville Coal Co. v. Strine*, 217 Ill. 516.

When may cure bad instruction.

*Odin Coal Co. v. Tadlock*, 216 Ill. 624.

Jury given or offered by defendant—force of.

*Condon v. Schoenfeld*, 214 Ill. 226.

New witness after case has been closed—discretionary.

*C. C. Ry. Co. v. Matthieson*, 212 Ill. 292.

Sufficiency and admission of, when reviewed by supreme court.

*C. & E. I. R. R. Co. v. Schuntz*, 211 Ill. 446.

Making offer of—jury should retire.

*Henrietta Coal Co. v. Campbell*, 211 Ill. 216.

How far supreme court will consider.

C. C. Ry. Co. v. Bundy, 210 Ill. 39.

As to affidavit of age under Mine Act—who should secure.

Marquette Coal Co. v. Dielle, 208 Ill. 117.

Leading questions—when properly allowed.

Cobb Chocolate Co. v. Knudson, 207 Ill. 452.

Conclusion of supreme court will not review.

Cobb Chocolate Co. v. Knudson, 207 Ill. 452.

Necessary to secure continuance.

Cobb Chocolate Co. v. Knudson, 207 Ill. 452.

Supporting one count—sufficient.

C. C. Ry. Co. v. O'Donnell, Admr., 207 Ill. 478.

Proper offer of—what is—what not.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

By plaintiff—after close of case—discretion.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Weight of—on questions of fact—settled by appellate court.

Illinois Steel Co. v. Wierzbicky, 206 Ill. 201.

Supporting one count, sufficient.

N. C. St. Ry. Co. v. Rodert, 208 Ill. 413.

Leading questions—allowing is discretionary.

P. C. C. & St. L. Ry. Co. v. Kinnare, Admr., 203 Ill. 388.

Impeaching own witness when proper.

U. S. Brewing Co. v. Ruddy, 203 Ill. 306.

Weight of finally settled in appellate court.

Wrisley Co. v. Burke, 203 Ill. 250.

Admissibility of, closely noted if evidence conflicting.

C. & E. I. R. R. Co. v. Donworth, 203 Ill. 192.

Need not prove by *clear* preponderance.

Nelson v. Fehd, 203 Ill. 120.

Deposition misreading of by attorney—reversible error.

Lake St. Elevated R. R. Co. v. Shaw, 203 Ill. 39.

Weight of must be reviewed by appellate court.

*Voight, Admx., v. Anglo-Amer. Provision Co.*, 202 Ill. 462.

Consideration of by appellate court presumed.

*Voight, Admx., v. Anglo-Amer. Provision Co.*, 202 Ill. 462.

In chief put in on rebuttal—permission discretionary.

*Hartrich et al. v. Hawes*, 202 Ill. 334.

Preponderance of not reviewable in supreme.

*C. & A. R. R. Co. v. Flaherty*, 202 Ill. 151.

Weight of settled in appellate court.

*P. C. C. St. L. Co. v. Hewitt*, 202 Ill. 23.

Sufficiency of settled by appellate court.

*Mallott v. Hood*, 201 Ill. 202.

Questions of fact raised by settled by appellate court.

*C. C. Ry. Co. v. Loomis*, 201 Ill. 118.

Weight of not considered in supreme court.

*C. C. Ry. Co. v. Loomis*, 201 Ill. 118.

Of weight of evidence not raised in supreme.

*S. C. C. Ry. Co. v. Purvis*, 193 Ill. 454.

*W. A. C. & C. Co. v. Beaver*, 192 Ill. 333.

Allowing evidence after argument—proper—discretion.

*I. D. & W. Ry. Co. v. Hendrian*, 190 Ill. 501.

Ruling as to—error must do harm to reverse.

*Ill. Steel Co. v. Mann*, 197 Ill. 186.

When not pertinent but instructions on both sides refer to—neither can complain.

*C. & A. R. R. Co. v. Harrington*, 192 Ill. 9.

Weight of settled by appellate court.

*Heldmaier v. Taman*, 188 Ill. 283.

As part of plaintiff's case may be put in after defendant has rested—when.

*Maxwell v. Durkin*, 185 Ill. 546.

Sufficiency of—not reviewed if no motion to instruct made.

*I. C. R. R. Co. v. Davenport*, 177 Ill. 110.

Withholding—comment on in argument is proper.

*Consolidated Coal Co. v. Schelber*, 167 Ill. 539.

Must prove negligence as charged.

*Ebsery v. C. C. Ry. Co.*, 164 Ill. 518.

How far reviewable by supreme court.

*Cicero St. Ry. Co. v. Melzner*, 160 Ill. 320.

When admission of incompetent will not reverse.

*N. Y. C. & St. L. R. R. Co. v. Blumenthal*, 160 Ill. 40.

Sufficiency of—must be raised at trial.

*I. C. R. R. Co. v. Reardon*, 157 Ill. 372.

Sufficiency of—how raised on appeal.

*O. & M. Ry. Co. v. Wangelin*, 152 Ill. 138.

*I. C. R. R. Co. v. Larson*, 152 Ill. 326.

Cured by instruction though incompetent.

*Hanewacker v. Fernan*, 152 Ill. 321.

Evidence—order of introducing not objectionable.

*McDanel v. Logi*, 143 Ill. 487.

Sufficiency of evidence how raised in supreme court.

*Dunham Towing & W. Co. v. Dandelin*, 143 Ill. 409.

Evidence must be based on the pleadings.

*Blanchard v. L. S. & M. S. Ry. Co.*, 126 Ill. 417.

Weight is question of fact.

*I. & St. L. R. R. Co. v. Estes*, 96 Ill. 470.

Variance in—question of how saved—not here.

*Alton Ry., G. & E. Co. v. Webb*, 219 Ill. 563.

Cannot be heard to determine whether cause of action is the same where plaintiff begins over after non-suit—must be decided from the pleadings.

*Gibbs v. Crane Elevator Co.*, 180 Ill. 191.

All the evidence must appear in the bill of exceptions—when—rule.

*I. C. R. R. Co. v. O'Keefe*, 154 Ill. 508.

In abstract—what should be included.

*The Fair v. Hoffman*, 209 Ill. 330.



**Cross-examination—scope of, etc.**

(See also PRACTICE.)

**Cross-examination—what proper.****C. & A. R. R. Co. v. Walters, 217 Ill. 87.****Cross-examination as to past life—good as to credibility.****C. C. Ry. Co. v. Uhter, 212 Ill. 174.****Cross-examination in “possible faking”—wide latitude.****C. U. T. Co. v. Miller, 212 Ill. 49.****Cross-examination—scope of—restricting—discretion****C. C. Ry. Co. v. Creech, 207 Ill. 400.****Cross-examination—as to usual custom of physician.****P. C. C. & St. L. R. R. Co. v. Banfile, 206 Ill. 553.****Cross-examination—asking doctor who sent and paid him—approved.****C. C. Ry. Co. v. Carroll, 206 Ill. 318.****Improper cross-examination—not raised by general objection.****Wrisley Co. v. Burke, 203 Ill. 250.****Of ignorance of plaintiff as to injury as excusing want of care—proper on cross-examination.****City of Bloomington v. Purdue, 99 Ill. 329.****Rebutting evidence may be allowed—when—impeaching the witness.****Demick v. Downs, 82 Ill. 570.****Improper evidence is rendered harmless where the count under which it is introduced is abandoned.****C. & N. W. Ry. Co. v. Taylor, 69 Ill. 461.****Improper admission of—will not reverse where not harmful.****Kelsey v. Henry, 49 Ill. 488.**

**z-13. As to Proximate Cause.**

(See also PROXIMATE CAUSE.)

Of proximate cause of injury failure to warn.

Elgin J. & E. Ry. Co. v. Hoadley, 220 Ill. 463.

Of proximate cause in defendant's negligence.

C. C. Ry. Co. v. Shaw, 220 Ill. 532.

Of proximate cause—defendant's negligence not shown to be.

Burke v. Hulett, 216 Ill. 545.

Of fear and fright as proximate cause not shown.

South Chicago C. Ry. Co. v. Kinnare, 216 Ill. 451.

Of proximate cause in failure to warn good.

Shickle-Harrison & H. Iron Co. v. Beck, 212 Ill. 263.

That defendant's negligence was not proximate cause—horse ran away.

Wabash R. R. Co. v. Billings, 212 Ill. 37.

That remote cause is proximate cause—when.

Garibaldi & Cuneo v. O'Connor, 210 Ill. 284.

Of proximate cause of injury what is.

C. & A. R. R. Co. v. Wise, 206 Ill. 453.

Of cause of accident where passenger injured—not required.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Of defect as proximate cause sufficient.

Missouri Mall. Iron Co. v. Dillon, 206 Ill. 145.

Of proximate cause plaintiff's negligence—bicycle ran into car.

N. C. St. Ry. Co. v. Cossar, 203 Ill. 608.

Of proximate cause negligence of foreman.

Chicago Hair & Bristle Co. v. Mueller, 203 Ill. 553.

Of defect as proximate cause shown.

Chicago Screw Co. v. Weiss, 203 Ill. 536.

. Of defendant's negligence as proximate cause sufficient.

*Armour v. Golkowska*, 202 Ill. 144.

Of proximate cause—general test—rule.

*Armour v. Golkowska*, 202 Ill. 144.

That defendant's negligence was proximate cause sufficient.

*True & True Co. v. Woda*, 201 Ill. 315.

#### **z-14. Of Promise to Repair.**

(See also PROMISE TO REPAIR.)

Of promise to repair—good though not made to plaintiff if he knew of.

*Odin Coal Co. v. Tadlock*, 216 Ill. 624.

#### **z-15. As to Public Street—What is.**

(See also DEFECTIVE STREETS.)

Of public place of travel though occupied by tracks.

*Ill. T. Co. v. Mitchell*, 214 Ill. 151.

As to what is public street is for jury.

*I. C. R. R. Co. v. Jernigan*, 198 Ill. 297.

Of general use of railroad as highway—competent.

*Martin v. C. & N. W. Ry. Co.*, 194 Ill. 138.

That public use street, is not proof that it is a public highway—acceptance required.

*City of Rock Island v. Starkey*, 189 Ill. 515.

That street is public highway—what is proof.

*B. & O. S. W. Ry. Co. v. Farth*, 175 Ill. 58.

As to what is a public street—sufficient.

*Union Stock Yards Co. v. Karlik*, 170 Ill. 403.

Burden of proof to show street a public highway is on plaintiff.

*C. & A. R. R. Co. v. Heinrich*, 157 Ill. 388.

**Evidence—plat of street—preliminary proof required.**

*C. C. Ry. Co. v. McLaughlin*, 146 Ill. 353.

**Evidence of use of right of way by public—when incompetent.**

*L. S. & M. S. Ry. Co. v. Bodemer*, 139 Ill. 597.

**Of what is a street crossing.**

*Blanchard v. L. S. & M. S. Ry. Co.*, 126 Ill. 417.

### **z—As to Habits, Reputation, etc.**

**Of intoxication of driver of wagon good.**

*Cooke Brewing Co. v. Ryan*, 223 Ill. 382.

**Of reputation of servant for carelessness, good—how far.**

*Metropolitan "L" Ry. Co. v. Fortin*, 203 Ill. 454.

**Of reputation of engineer for carefulness good when.**

*I. C. R. R. Co. v. Prickett*, 210 Ill. 140.

**As to disposition of horse competent.**

*Pioneer Fireproof Con. Co. v. Sunderland*, 188 Ill. 341.

**Of reputation of deceased for care good where no witness to accident.**

*Dallemand v. Saalfeldt*, 175 Ill. 310.

*I. C. R. R. Co. v. Ashline*, 171 Ill. 313.

**Of habits of plaintiff as to drinking intoxicants—incompetent when there is direct proof of his conduct.**

*C. & A. R. R. Co. v. Pearson, Admr.*, 184 Ill. 386.

**Of character of deceased competent.**

*Buck v. Maddock*, 167 Ill. 219.

**Evidence of reputation—good where no eye witness.**

*I. C. R. R. Co. v. Nowicki*, 148 Ill. 29.

**Evidence of reputation for care—good where injury not witnessed.**

*T., St. L. & K. C. Ry. Co. v. Bailey*, 145 Ill. 159.

Evidence of general reputation of a locomotive—incompetent.

*T., St. L. & K. C. Ry. Co. v. Bailey*, 145 Ill. 159.

Evidence of habitual drunkenness—when proper.

*Smith v. The People*, 141 Ill. 447.

Of habits of deceased good where no witness to accident.

*C., R. I. & P. Ry. Co. v. Clark*, 108 Ill. 114.

That deceased was in habit of "catching" onto car—incompetent.

*P. & P. U. Ry. Co. v. Clayberg, Admr.*, 107 Ill. 644.

As to intemperance of plaintiff—when bad.

*Parker v. Enslow*, 102 Ill. 272.

Of intoxication—proper—injured on defective walk.

*City of Aurora v. Hillman*, 90 Ill. 61.

Only general reputation may be inquired into.

*Demick v. Downs*, 82 Ill. 570.

Evidence that deceased was intoxicated at the time of injury—proper.

*I. C. R. R. Co. v. Cragin*, 71 Ill. 177.

Evidence as to the habits of deceased incompetent unless particular habits are referred to.

*C., R. I. & P. Ry. Co. v. Bell*, 70 Ill. 102.

Proof that an engine was reputed unsafe—good.

*C. & A. R. R. Co. v. Shannon*, 43 Ill. 338.

### **x-17. As to Release.**

(See also RELEASE OF LIABILITY.)

That a lease released landlord is of no force where plaintiff is not party to the lease.

*Shoninger Co. v. Mann*, 219 Ill. 242.

As to how release was obtained—proper.

*C. & A. R. R. Co. v. Jennings*, 217 Ill. 494.

Release of liability as evidence force of.

C. & A. R. R. Co. v. Jennings, 217 Ill. 494.

Release in contract of employment bars recovery.

C., R. I. & P. Ry. Co. v. Hamler, 215 Ill. 525.

That release was obtained by fraud invalidates.

Spring Valley Coal Co. v. Buzis, 213 Ill. 341.

Of obtaining release by fraud.

C. C. Ry. Co. v. Uhter, 212 Ill. 174.

Of fraud in securing release sufficient.

I. D. & W. Ry. Co. v. Fowler, 201 Ill. 152.

Of release—what may be asked as to plaintiff's signing same.

National Syrup Co. v. Carlson, 155 Ill. 210.

### **z-18. Res Gestae—What is Part of.**

Of warning to motorman and his reply just before injury—good as res gestae.

O. C. Ry. Co. v. McDonough, 221 Ill. 69.

As part of res gestae—what is.

C. C. Ry. Co. v. Lowitz, 218 Ill. 26.

Declarations of plaintiff as to injury res gestae when.

Muren Coal & Ice Co. v. Howell, 217 Ill. 190.

When facts are part of—res gestae defined.

C. C. Ry. Co. v. Uhter, 212 Ill. 174.

Res gestae—conversation after injury not part of.

Springfield C. Ry. Co. v. Puntenny, 200 Ill. 9.

Res gestae—groans, etc., as part of.

City of Salem v. Webster, 192 Ill. 369.

Res gestae—rule as to what is part of.

Springfield Ry. Co. v. Hoeffner, 175 Ill. 634.

Res gestae what is part of.

W. C. St. Ry. Co. v. Kennelly, 170 Ill. 508.

Evidence—*res gestae*—remarks of conductor at time of injury when good.

Quincy Horse Ry. Co. v. Gnuse, 137 Ill. 264.

### **z-19. As to Safe Place.**

(See also **SAFE PLACE TO WORK.**)

Of unsafe place to work—shown.

McCormick H. Mch. Co. v. Zakzewski, 220 Ill. 522.

Of failure to provide safe place.

Muren Coal & Ice Co. v. Howell, 217 Ill. 190.

Of failure to provide safe place to work.

Henrietta Coal Co. v. Campbell, 211 Ill. 216.

Of failure to provide safe place—sufficient.

Barnett & Record Co. v. Schlapka, 208 Ill. 426.

Of failure to provide safe place—Mine Act.

Marquette Coal Co. v. Dielle, 208 Ill. 117.

Of safe place to work—under changing conditions—not.

Momence Stone Co. v. Turrell, 205 Ill. 515.

Of unsafe appliances—what necessary.

Metcalf Co. v. Nystedt, 203 Ill. 333.

Of failure to provide safe place—sufficient.

Armour v. Golkowska, 202 Ill. 144.

### **z-20. As to Condition of Sidewalk—What Good.**

Of attempt to repair sidewalk force of.

City of Mattoon v. Faller, 217 Ill. 273.

Of condition of sidewalk good to show notice

City of Elgin v. Nofs, 212 Ill. 20.

Of ice on sidewalk duty of city as to.

I. C. R. Co. v. Keegan, 210 Ill. 150.

That plaintiff had been over defective walk before force of.

Village of Wilmette v. Brachle, 209 Ill. 621.

Of condition of sidewalk—latitude as to time and place.

City of Elgin v. Nofs, 200 Ill. 252.

Magnifying glass, use of by jury—reversible error.

City of Elgin v. Nofs, 200 Ill. 252.

Of defect in sidewalk at places other than place of injury good to show notice.

City of Taylorville v. Stafford, 196 Ill. 288.

That a railing had existed on sidewalk when competent.

City of Chicago v. Baker, 195 Ill. 54.

Attempt to repair sidewalk force of.

Town of Wheaton v. Hadley, 131 Ill. 640.

### **z-21. Tending to Prove a Fact.**

Facts tending to prove—defective insulation.

Chicago Suburban Water Co. v. Hyslop, 227 Ill. 308.

What evidence tends to prove defendant's negligence.

Grace Co. v. Larson, 227 Ill. 101.

Evidence tending to prove operation of street car—shown.

C. U. T. Co. v. Jerka, 227 Ill. 95.

What not tending to prove point in issue.

Swift & Co. v. Ronan, 202 Ill. 202.

What is evidence tending to show—sudden stopping of street car—passenger injured.

C. C. Ry. Co. v. Morse, 197 Ill. 327.

When tending to support negligence of defendant.

Momence Stone Co. v. Groves, 197 Ill. 88.

C. C. Ry. Co. v. Morse, 197 Ill. 327.

Slight preponderance of, supports verdict.

Donley v. Dougherty, 174 Ill. 582.



When facts tend to show.

*L. Wolff Mfg. Co. v. Willson*, 152 Ill. 9.

Evidence tending to show—what is.

*Joliet Steel Co. v. Shields*, 146 Ill. 603.

Whether there is any tending to prove case.

*I. & St. L. R. R. Co. v. Estes*, 96 Ill. 470.

### **z-22. As to Licensees and Trespassers.**

(See also TRESPASSEES AND LICENSEES.)

That one not an employe opened depot door—effect.

*C. & A. R. R. Co. v. Walker*, 217 Ill. 605.

Of entering depot without authority—effect.

*C. & A. R. R. Co. v. Walker*, 217 Ill. 605.

Of invitation by conductor to passenger to ride in engine—force of.

*I. C. R. R. Co. v. Jennings*, 217 Ill. 140.

That plaintiff was trespasser—not sufficient—stock shipper.

*E. J. & E. Ry. Co. v. Thomas*, 215 Ill. 158.

Of trespasser on railroad tracks—held not.

*Ill. T. Co. v. Mitchell*, 214 Ill. 151.

As to who has right of way.

*C. C. Ry. Co. v. Lannon*, 212 Ill. 477.

That street car need not stop for wagon—when sufficient.

*Knickerbocker Ice Co. v. Benedix*, 206 Ill. 362.

That plaintiff was mere licensee—sufficient.

*I. C. R. R. Co. v. Elcher*, 202 Ill. 556.

Of license to be on right of way—what presumed from.

*I. C. R. R. Co. v. Elcher*, 202 Ill. 556.

That person is “mere licensee” on premises—insufficient.

*I. C. R. R. Co. v. Hopkins*, 200 Ill. 122.

Of trespassing on railroad bridge—not shown.

Chicago T. T. R. R. Co. v. Gruss, 200 Ill. 195.

**z-23. As to Variance.**

(See also VARIANCE.)

Variance—in description of injury.

Elgin, A. & S. T. Co. v. Wilson, 217 Ill. 47.

Of variance—sufficient—but cured by amendment.

Franke v. Hanley, 215 Ill. 216.

Evidence that defendant only partially caused habitual drunkenness of husband—no variance.

Brannon v. Silvernall, 81 Ill. 434.

**z-24. As to Verdict.**

(See also VERDICT.)

If obviously sustains verdict—bad instruction will not reverse.

National E. Co. v. McCorkle, 219 Ill. 557.

That verdict is excessive—settled by appellate court.

C. & J. Elec. Ry. Co. v. Patton, 219 Ill. 215.

After three trials—same verdict—conclusive.

Hitchcliff v. Rudnik, 212 Ill. 569.

If conflicting—verdict should stand.

C. C. Ry. Co. v. McClain, 211 Ill. 589.

**z-25. As to Vice-Principal.**

(See also VICE-PRINCIPAL.)

Of vice-principalship—when foreman is.

Ill. Steel Co. v. Ziemkowski, 220 Ill. 324.

That motorman is vice-principal in absence of conductor.

C. C. Ry. Co. v. Lowitz, 218 Ill. 26.

Of vice-principalship what is.

Ill. S. Ry. Co. v. Marshall, 210 Ill. 562.

Of vice-principalship yard master ordering out cars.

C. E. I. R. R. Co. v. Driscoll, 207 Ill. 9.

Of vice-principalship.

Missouri U. I. Co. v. Dillon, 206 Ill. 145.

Of vice-principal sufficient.

Chicago Hair & B. Co. v. Mueller, 203 Ill. 558.

Of negligence of vice-principal shown—injured in elevator.

Slack v. Harris, 200 Ill. 96.

## **z-26. Of Wilful Negligence.**

(See also NEGLIGENCE.)

Of wilful violation of Mine Act what is.

Kellyville Coal Co. v. Strine, 217 Ill. 516.

Of wilful and wanton negligence what is not.

C. C. Ry. Co. v. Jordan, 215 Ill. 390.

Of wilful and wanton negligence sufficient.

C. C. Ry. Co. v. O'Donnell, 207 Ill. 478.

Of wilful and wanton negligence good.

I. C. R. R. Co. v. Leiner, 202 Ill. 624.

Of wilful and wanton negligence sufficient—train struck passenger.

C. T. T. R. R. Co. v. Gruss, 200 Ill. 195.

Of wilful negligence not shown toward trespasser.

James v. I. C. R. R. Co., 195 Ill. 327.

Tending to show wilful negligence.

Elgin, J. & E. Ry. Co. v. Duffy, 191 Ill. 489.

Of justification in assault and battery bad where assault is wilful and plea of not guilty only filed.

Ill. Steel Co. v. Novak, 184 Ill. 501.

**z-27. Witnesses—Who May Testify.**(See also **WITNESSES.**)

Of husband in damage suit by wife good.

Ward v. Meredith, 220 Ill. 66.

Of interested witness in suit by administrator when bad.

Fetl, Admx., v. C. C. Ry. Co., 211 Ill. 279.

Of motorman when made a defendant or interested good.

Fetl, Admx., v. C. C. Ry. Co., 211 Ill. 279.

Of husband as witness for wife—good.

N. C. St. Ry. Co. v. Wellner, 206 Ill. 272.

Of deceased witness on second trial—competent.

C. & E. I. R. R. Co. v. O'Connor, 119 Ill. 538.

**Preponderance of.** Preponderance of the evidence does not mean beyond a reasonable doubt.

P. & I. R. Co. v. Lane, 83 Ill. 448.

**Weight of.** Rule as to ascertaining weight of evidence.

C., R. I. & P. Ry. Co. v. McLean, 40 Ill. 218.

**Pleadings—relation to.** Evidence must be confined to the averments of the pleadings—variance shown.

T. W. & W. R. R. Co. v. Beggs, 85 Ill. 80.

Plaintiff need not prove every charge alleged.

Roth v. Eppy, 80 Ill. 283.

Proof of damages is limited to the allegations of the pleadings.

Quincy Coal Co. v. Hood, 77 Ill. 68.

**Negative and positive.** Evidence that no bell was rung or whistle blown is not negative evidence.

C., B. & Q. Ry. Co. v. Lee, 87 Ill. 454.

Negative and positive as to ringing of bell—of equal weight.

C., B. & Q. Ry. Co. v. Stumps, 55 Ill. 367.

Negative and affirmative evidence as to ringing of bell at crossing—held equally good—rule. (See also 38 Ill. 425.)

**C., B. & Q. Ry. Co. v. Triplett**, 38 Ill. 484.

Negative evidence—that bell did not ring held as good as evidence that it did.

**C., B. & Q. Ry. Co. v. Cauffman**, 38 Ill. 425 (19 Ill. 499 distinguished).

Evidence that bell did not ring is entitled to less weight than evidence that it did ring.

**C., R. I. & P. Ry. Co. v. Still**, 19 Ill. 499.

**EXCEPTIONS; RULES AS TO.**

Must be duly saved or no review above.

C. C. Ry. Co. v. Anderson, 193 Ill. 9.

City of Salem v. Webster, 192 Ill. 369.

C. G. & W. Ry. Co. v. Mohan, 187 Ill. 281.

To ruling as to conduct of counsel must be duly had—how saved.

C. & E. R. R. Co. v. Cleminger, 178 Ill. 536.

I. C. R. R. Co. v. Cole, 165 Ill. 334.

Are not saved unless had to rulings of the court.

N. C. St. Ry. Co. v. Leonard, 167 Ill. 618.

N. C. St. Ry. Co. v. Gillon, 166 Ill. 444.

W. C. St. Ry. Co. v. Sullivan, 165 Ill. 302.

W. C. St. Ry. Co. v. Annis, 165 Ill. 475.

N. C. St. Ry. Co. v. Southwick, 165 Ill. 494.

City of Bloomington v. Legg, 151 Ill. 10.

To refusal of peremptory instruction must be saved at trial.

Dunham Towing & W. Co. v. Dandelln, 143 Ill. 409.

As to variance—must be made at trial—how saved.

C. C. Ry. Co. v. Henry, 218 Ill. 93.

C. C. Ry. Co. v. Mager, 185 Ill. 336.

C. C. Ry. Co. v. McClain, 211 Ill. 589.

Pressed Steel Co. v. Herath, Admr., 207 Ill. 576.

I. C. R. R. Co. v. Behrens, 208 Ill. 20.

Ill. T. R. R. Co. v. Thompson, 210 Ill. 226.

Alton Railway G. & E. Co. v. Webb, 219 Ill. 563.

C. & N. W. Ry. Co. v. Gillison, 173 Ill. 264

As to variance—when not properly saved.

Village of Chatsworth v. Rowe, 166 Ill. 114.

Alton Railway G. & E. Co. v. Webb, 219 Ill. 563.

I. C. R. R. Co. v. Behrens, 208 Ill. 20.

Pressed Steel Co. v. Herath, Admr., 207 Ill. 576.

Probst Con. Co. v. Foley, 166 Ill. 31.

To remarks of court—must be duly saved.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Not saved unless ruling is made by court.

N. C. St. Ry. Co. v. Leonard, 167 Ill. 618.

Quincy Gas & Elec. Co. v. Bauman, 203 Ill. 295.

C. C. Ry. Co. v. Anderson, 193 Ill. 9.

N. C. St. Ry. Co. v. Gillon, 166 Ill. 444.

W. C. St. Ry. Co. v. Sullivan, 165 Ill. 302.

W. C. St. Ry. Co. v. Annis, 165 Ill. 475.

As to preponderance of evidence—not considered in supreme court.

C. & A. R. R. Co. v. Flaherty, 202 Ill. 151.

Not raised in appellate court are waived.

Central Union Bldg. Co. v. Kolander, 212 Ill. 27.

To error caused by party assigning—bad.

C. U. T. Co. v. Lundahl, 215 Ill. 289.

Must be made on first appeal—when.

Muren Coal & Ice Co. v. Howell, 217 Ill. 190.

Must be shown in abstract of record.

The Fair v. Hoffman, 209 Ill. 330.

To ruling on evidence—when and how taken.

C. C. Ry. Co. v. Henry, 218 Ill. 93.

Fetl, Admx., v. C. C. Ry. Co., 211 Ill. 279.

To ruling on evidence may be waived by statement of attorney.

C. C. Ry. Co. v. McCaughna, 216 Ill. 202.

That verdict is excessive settled by appellate court.

C. & J. Elec. Ry. Co. v. Patton, 219 Ill. 215.

To instruction—abstract must contain all instructions and exceptions to.

Siegel, Cooper & Co. v. Norton, 209 Ill. 201.

Not saved below not raised above.

I. C. R. R. Co. v. Leiner, Admr., 202 Ill. 624.

**Must all be saved in trial court.**

Union Show Case Co. v. Blindauer, 175 Ill. 325.

Muren Coal Co. v. Howell, 217 Ill. 190.

**Must be incorporated in bill of exceptions.**

C., B. & Q. R. R. Co. v. Haselwood, 194 Ill. 69.

**To evidence must be saved below, or not reviewed.**

Hughes v. Richter, Admr., 161 Ill. 409.

C. G. & W. R. R. Co. v. Mohan, 187 Ill. 281.

**To remarks of court—how saved—to evidence—must be specific.**

I. C. R. R. Co. v. Cole, 165 Ill. 334.

St. L. A. & T. H. R. R. Co. v. Bauer, 156 Ill. 106.



**EXPLOSIONS—CASES.**

**Explosion in steel mill due to "break out" in blast furnace.** Metal escaped and came into contact with water. Employee killed. No inspection for a year. In use sixteen years. Judgment \$5,000. Affirmed.

Ill. Steel Co. v. Saylor, Admr., 226 Ill. 283.

**Explosion of fireworks—Fourth of July.** Explosion of fireworks at Fourth of July celebration. Employees of defendant had charge of setting off the fireworks; which they left exposed. Case against city dismissed after arguments. (See same case, 206 Ill. 283.) Judgment \$4,000. Reversed and remanded because of dismissal of case against city so as to prejudice defendant.

Consolidated Fireworks Co. v. Koehl, 190 Ill. 145 (4-01).

**"Mould" in steel mill exploded.** Employee was cooling a "mould" after it had been "poured." Owing to slag in the mould it exploded, throwing hot metal upon employee. He knew of liability to explode if slag got into mould. Pourer and cooler not fellow-servants. Judgment for plaintiff. Affirmed.

Ill. Steel Co. v. Baumann, 178 Ill. 351 (2-99).

**Explosion of steam pipe.** Employee of independent contractor killed. Building had been partially turned over to owner. Action against owner. Judgment \$2,500. Affirmed.

Webster Mfg. Co. v. Mulvanny, 168 Ill. 311.

**Gas in trench—explosion—workman injured.** Judgment for plaintiff. Affirmed.

- Chicago Economic Gas Co. v. Myers, 168 Ill. 139.

**Explosion of locomotive.** Steam guage and stop valves defective. Engineer killed. No witnesses. Judgment \$3,000. Affirmed.

T., St. L. & K. C. Ry. Co. v. Bailey, 145 Ill. 159.

**Explosion of gas in mine shaft.** Gas accumulated owing to defective arrangements for circulation. Workman struck his lamp against his foot which caused the flame to ignite the gas in the shaft. He was killed by the explosion. Defective safety lamp. Experienced miner. Judgment for plaintiff. Reversed in supreme court because of erroneous instruction on assumed risk.

Coal Run Coal Co. v. Jones, Admx., 127 Ill. 378.

**Explosion of gas in mine—miner injured.** Miner injured by explosion of gas in mine. Gas ignited by a "shot" set by plaintiff in his work. Failure to provide doors—Mine Act. Judgment for plaintiff. Affirmed.

Riverton Coal Co. v. Shepherd, 207 Ill. 395 (2-04).

**Explosion of gas in a beer tank.** Deceased was varnishing the tank and was furnished with a lamp supposed to be safe. Owing to some defect in the lamp the gas in the tank exploded. Deceased had control of the lamp. Judgment for plaintiff. Reversed.

Schaller, Admr., v. Independent Brewing Co., 225 Ill. 492.

**Explosion of gas in mine.** Miner killed by explosion of gas in mine. Violation of Mine Act. Failure to post notices or inspect. Judgment \$1,500. Affirmed.

Altrens Mining Co. v. Cardiff, 221 Ill. 354 (4-06).

**Explosion of locomotive.** Porter on Pullman car injured by explosion of engine boiler. He had signed a contract releasing the railroad from liability for injury caused to employes of the Pullman company. This contract was held good and not against public policy. Judgment for defendant. Affirmed.

C., R. I. & P. Ry. Co. v. Hamler, 215 Ill. 525.

**Explosion of locomotive—engineer killed.** Engineer killed by explosion of boiler of locomotive he was running. Defective bolts. Reputation of deceased. Judgment \$4,000. Affirmed.

Ill. Cent. R. R. Co. v. Prickett, Admr., 210 Ill. 140 (6-04).

**Explosion of locomotive injured section-hand.** Section-hand working near track injured by explosion of locomotive on track near him. Engine seven years old. Left round-house five years before but not inspected since. Knee injured. Judgment \$3,000. Affirmed.

Ill. Cent. R. R. Co. v. Behrens, 208 Ill. 20 (2-04).

**Explosion of locomotive boiler.** Explosion of engine boiler on which deceased was employed as fireman. Crown sheet had become superheated, softened and defective. Failure to repair. Judgment for plaintiff. Affirmed.

C. & E. I. R. R. Co. v. Rains, Admx., 203 Ill. 417 (6-03).

**Explosion of dynamite—adjacent building damaged.** Dynamite used to excavate tunnel for water pipes. Shock of explosion injured adjacent buildings. Judgment \$2,750. Affirmed.

Fitz-Simmons & Connell Co. v. Braun & Fitts, 199 Ill. 390.

**Improper cooling of "cobbles"—explosion—workman injured.** Defendant cooled a pile of steel rails or "cobbles" with water, causing them to warp and become dangerous. Plaintiff whose duty it was to remove the "cobbles" when cooled had not been warned of their being cooled with water. As a result he was injured while removing the "cobbles." Judgment \$7,000. Remits \$2,000. Affirmed in appellate and supreme courts.

Ill. Steel Co. v. H. Hanson, 195 Ill. 106 (2-02).

**Explosion of dynamite cap—came in contact with live coals.** Defendant was contractor excavating drainage canal and employed plaintiff. A dynamite cap that was to be used to blow

**up rock, exploded by coming in contact with live coals from the boiler house of defendant, injuring plaintiff; who was a drill runner. Eye sight destroyed. The dynamite stick had been left on a rafter in the boiler house and fell off on to cinder pit. Judgment \$1,250. Affirmed.**

*Heldmaier v. Cobbs*, 195 Ill. 172 (2-02).

**Explosion of "cinder tap"—workman blinded. "Cinder tap" exploded, throwing hot slag against plaintiff. Fellow-servant wheeled hot cinder tap into yard and dumped it on snow. It subsequently exploded blinding plaintiff. Judgment \$5,000. Affirmed.**

*Western Tube Co. v. Palobiuski*, 192 Ill. 113 (10-01).

**Explosion of steam tank. Owing to a defective construction. Laborer working near injured. Judgment for plaintiff. Reversed because of refused instruction.**

*Allerton Packing Co. v Egan*, 86 Ill. 253.

**Explosion of locomotive boiler. Engineer killed,—engine defective. Conflict of evidence as to defect. Defendant supposed to know of defect. Judgment \$5,000. Reversed because of an instruction for plaintiff as to what would be prima facie case against defendant.**

*T. W. & W. Ry. Co. v. Moore*, 77 Ill. 217.

**Explosion of engine—brakeman killed. Explosion due to negligence of engineer. Judgment for plaintiff. Reversed on ground that the engineer and brakeman were fellow-servants.**

*I. C. R. R. Co. v. Keen, Admx.*, 72 Ill. 512.

**Boiler of engine exploded, engineer killed. Engine defective. Engine carrying more steam than company allowed. Judgment for plaintiff. Reversed on ground no cause of action; defendant's negligence not being shown.**

*I. C. R. R. Co. v. Houck*, 72 Ill. 285.

**Explosion of locomotive boiler.** Plaintiff was walking on depot platform; hit by flying fragment. (Same case as 49 Ill. 234.) Judgment \$16,000. Reversed on ground no omission of.

I. C. R. R. Co. v. Phillips, 55 Ill. 194.

**Explosion of locomotive boiler.** Train stood near depot. Plaintiff was walking along on depot platform. Struck on head by fragment. Symptoms of paralysis. Judgment \$7,000. Reversed for refusal of instruction. Care required by railroad company as to persons not passengers or employes.

Sheeran v. C. & M. R. R. Co., 48 Ill. 523.

I. C. R. R. Co. v. Phillips, 49 Ill. 234 (same case as 55 Ill. 194).

**Explosion of locomotive boiler.** Brakeman killed. Defective bracing and cracked. Judgment \$2,000. Affirmed.

C. & A. R. R. Co. v. Shannon, 43 Ill. 338.

**FACTS—LAW AS TO.**

What is sufficient light in mine is question of fact.

*Eldorado Coal Co. v. Swan*, 227 Ill. 586.

What are questions of—when reasonable minds would differ.

*C. & E. J. Ry. Co. v. Snedaker*, 223 Ill. 395.

*City of Aurora v. Scott*, 185 Ill. 539.

“Rate of speed” is a question of.

*C. & A. R. R. Co. v. Winters*, 175 Ill. 294.

Questions of settled by appellate court.

*N. C. St. Ry. Co. v. Housinger*, 175 Ill. 318.

*Whitney & S. Co. v. O'Rourke*, 172 Ill. 177.

Peremptory instruction not necessary to allow supreme court to review.

*Gall v. Beckstein*, 173 Ill. 187.

Evidentiary are conclusively settled by appellate court.

*Springfield Mining Co. v. Grogan*, 169 Ill. 50.

Supreme court will examine to find if they tend to support verdict.

*C. & A. R. R. Co. v. Heinrich*, 157 Ill. 388.

*L. N. A. & C. Ry. Co. v. Red*, 154 Ill. 95.

Speed of train at time of injury is question of.

*L. S. & M. S. Ry. Co. v. Ouska*, 151 Ill. 232.

Incompetency of servant is question of.

*Western Stone Co. v. Whalen*, 151 Ill. 473.

What are questions of.

*M. & O. R. R. Co. v. Davis*, 130 Ill. 146.

Supreme court will review to decide as to instruction.

*Union Ry. & T. Co. v. Shacklet, Admr.*, 119 Ill. 232.

**FELLOW-SERVANTS.**

GENERAL RULES AS TO, p. 268.  
WHEN A QUESTION OF LAW, p. 269.  
RELATION NOT SHOWN, p. 269.  
RELATION SHOWN, p. 274.  
ONLY BETWEEN MASTER AND SERVANT, p. 274.  
WHEN NOT SHOWN, p. 274.  
WHEN MASTER LIABLE FOR NEGLIGENCE OF, p. 277.  
INSTRUCTIONS AS TO, p. 278.  
WHEN QUESTION OF FACT, p. 278.  
PLEADINGS AS TO, p. 279.  
INCOMPETENT SERVANT—NEGLIGENCE OF, p. 279.  
PRACTICE AS TO, p. 279.

The relation of fellow-servants exists where servants of a common master are so associated in their respective service, that reasonable minds would not differ in declaring that their relations are such that by the exercise of ordinary care they would become acquainted with and be able to protect themselves against the carelessness of each other.

**a. General Rules as to.**

Rule as to first stated in 93 Ill. 302.

Ill. Steel Co. v. Ziemkowski, 220 Ill. 324.

Doctrine as to—servants in different departments.

C. & E. I. R. R. Co. v. White, 209 Ill. 124.

The relation held not to depend upon the acquaintance of servant with servant—rule as to.

World's Col. Ex. v. Lehigh, 196 Ill. 612.

The statute of Indiana abrogating rule of governs an action in Illinois for injury in Indiana.

C. & E. I. Ry. Co. v. Rouse, 178 Ill. 132.

Question of—is one of law and fact—rule stated.

L. E. & W. R. R. Co. v. Middleton, 142 Ill. 550.

When master not liable for wilful negligence of servant.

I. C. R. R. Co. v. Downey, 18 Ill. 259.

### b. When a Question of Law.

When a question of law.

Ill. Third Vein Coal Co. v. Cloni, 215 Ill. 583.

Ill. Southern R. R. Co. v. Marshall, 210 Ill. 562.

Is question of law where from plaintiff's evidence, reasonable minds would not disagree as to the relation.

Meyer v. I. C. R. R. Co., 177 Ill. 591.

### c. Cases in which, Relation of, not Shown.

Switch-tender and train crew—held not to be.

P. C. C. & St. L. Ry. Co. v. Bovard, Admr., 223 Ill. 176.

When not shown—rule.

C. & E. I. R. R. Co. v. Kimmel, 221 Ill. 547.

Steel "blower" and workman held not to be—rule as to who are.

Ill. Steel Co. v. Ziemkowski, 220 Ill. 324.

Carpenter in shop and craneman held not to be.

National E. & S. Co. v. McCorkle, 219 Ill. 557.

Conductor and motorman on different cars of same line held not to be.

C. U. T. Co. v. Sawusch, 218 Ill. 130.

"Barn boss" and conductor—street railway held not to be.

C. U. T. Co. v. Sawusch, 218 Ill. 130.

Craneman and apprentice molder held not to be.

Leighton, etc. Steel Co. v. Snell, 217 Ill. 152.



Rule as to—bottom eager and miner—not.

Ill. Third Vein Coal Co. v. Cioni, 215 Ill. 583.

Section-hand and locomotive engineer held not to be.

I., I. & I. R. R. Co. v. Otstol, 212 Ill. 429.

Conductor and fireman on same train held not to be.

Rogers v. C. C. C. & St. L. Ry. Co., 211 Ill. 126.

Craneman and apprentice in shop held not to be.

Shickle-Harrison & H Iron Co. v. Beck, 212 Ill. 268.

Engineer in mine and miner held not.

Spring Valley Coal Co. v. Patting, 210 Ill. 342.

Mine driver and miner held not.

Spring Valley Coal Co. v. Robizas, 207 Ill. 226.

Yard master and brakemen held not to be.

C. & E. I. R. R. Co. v. Driscoll, 207 Ill. 9.

Held not—switch foreman and tower man.

C. & A. R. R. Co. v. Wise, 206 Ill. 453.

Missouri Mall. Iron Co. v. Dillon, 206 Ill. 145.

Crew of train and employe riding in the caboose on a pass held not to be.

I. C. R. R. Co. v. Leiner, 202 Ill. 624.

Held not to be—assistant foreman and special employe.

Chicago H. & B. Co. v. Mueller, 203 Ill. 558.

Car coupler at terminal and motoneer, held not to be.

Met. West Side Elevated Ry. Co. v. Fortin, 203 Ill. 454.

Evidence of insufficient—foreman and servant.

Wrisley Co. v. Burke, 203 Ill. 250.

Held not shown—shed fell with carpenter working under direction of foreman.

Sinclair Co. v. Waddill, 200 Ill. 17.

Frost Mfg. Co. v. Smith, 197 Ill. 253.

Elevator operator and elevator engineer held not to be under the evidence.

*Slack v. Harris*, 200 Ill. 96.

Brakeman of transfer crew and members of switching crew, held not to be.

*Hartley v. C. & A. R. R. Co.*, 197 Ill. 440.

Engineer in charge of hoist and mule driver in tunnel being built held not to be.

*Duffy v. Kivilin*, 195 Ill. 630.

Carpenter and foreman directing his work while building a shed that fell over held not to be.

*Frost Mfg. Co. v. Smith*, 197 Ill. 253.

Where foreman is a co-laborer held not—rule.

*Graver Tank Works v. O'Donnell*, 191 Ill. 236.

Hoisting engineer and workman "riding" to upper floors on an iron beam being hoisted—held not to be.

*Union Bridge Co. v. Teehan*, 190 Ill. 374.

Foreman setting machine in motion and workman injured by a defect in the machine, held not to be.

*Norton Bros. v. Nodebak*, 190 Ill. 595.

Employee using elevator and employee whose duty it is to keep it in repair, are not.

*H. Channon Co. v. Hahn*, 189 Ill. 23.

Assistant manager of mine and miner held not to be.

*Consolidated Coal Co. v. Gruber*, 188 Ill. 584.

Train crew and section-hand held not to be.

*C. & A. R. R. Co. v. Cullen, Admx.*, 187 Ill. 523.

Not shown.

*Swift & Co. v. O'Neill*, 187 Ill. 337.

*Wilmington & S. Coal Co. v. Sloan*, 225 Ill. 467.

*Hines Lumber Co. v. Ligas*, 172 Ill. 315.

*Springfield Mining Co. v. Grogan, Admx.*, 169 Ill. 50.

Employe of independent contractor working with employe of owner in piling lumber on dock held not to be.

John Spry Lumber Co. v. Duggan, 182 Ill. 218.

Rule as to fellow-servant discussed. Track repairer and engineer held not. Who are.

P., Ft. W. & C. Ry. Co. v. Powers, 74 Ill. 341.

Fellow-servantship not shown between laborer and engineer of same train, when engineer has control of the train and men.

C. & A. R. R. Co. v. Sullivan, 63 Ill. 293.

Laborer unloading cars and yardmaster of railroad company—not.

Lalor v. C., B. & Q. R. R. Co., 52 Ill. 401.

Laborers in different departments—held not to be—fact for jury.

Ill. Steel Co. v. Bauman, 178 Ill. 351.

Baggageman and engineer held not to be.

C. & A. R. R. Co. v. Swan, 176 Ill. 424 (162 Ill. 215 explained).

Foreman and painter adjusting a rope under his direction on a scaffolding—held not to be.

Affutt v. Columbian Ex., 175 Ill. 472.

Employe who negligently piled lumber, and employe upon whom it fell—held not.

Hines Lumber Co. v. Ligas, 172 Ill. 315.

Foreman acting as co-laborer—his negligence caused injury held not to be.

Pittsburg Bridge Co. v. Walker, 170 Ill. 550.

Carpenter erecting scaffold and mason injured by fall of held not.

C. & A. R. R. Co. v. Scanlan, 170 Ill. 106.

Not shown where barrel fell down mine shaft by negligence of servant at top, striking miner below.

Springfield Mining Co. v. Grogan, 169 Ill. 50.

Timber man and driver in mine—held not to be.

Consolidated Coal Co. v. Schreiber, 167 Ill. 539.

Of workman and one in temporary authority—not shown.

Fraser & Chalmers v. Schroeder, 163 Ill. 459.

Gripman of cable train and “starter” held not.

W. C. St. Ry. Co. v. Dwyer, 162 Ill. 482.

Section-hand and fence gang—held not.

C. & A. R. R. Co. v. O'Brien, 155 Ill. 630.

Engineer of tug boat and employe on boat being towed, held not.

Western Stone Co. v. Whalen, 151 Ill. 473.

Engineer of work train and member of work gang—not.

L. E. & St. L. Ry. Co. v. Hawthorn, 147 Ill. 226.

Track repairer and converting mill man in steel mill held not to be—rule of stated.

Joliet Steel Co. v. Shields, 146 Ill. 603 (same case 134 Ill. 209).

Engineer and section-hand held not.

P. D. & E. Ry. Co. v. Rice, 144 Ill. 227.

Fireman on regular train and engineer of extra—held not.

L. E. & W. R. R. Co. v. Middleton, 142 Ill. 550.

Engineer and semaphore operator—held not.

C. & N. W. Ry. Co. v. Snyder, Admx., 128 Ill. 655.

Car inspector and engineer—not—rule stated.

C. & A. R. R. Co. v. Hoyt, 122 Ill. 369.

Crew of construction train and section-hand—held not—instruction as to properly refused.

C. & A. R. R. Co. v. Kelly, 127 Ill. 638.

Foreman of wrecking crew and one of the crew—not.

W. St. L. & P. Ry. Co. v. Hawk, 121 Ill. 259.

Conductor and semaphore operator—not—rule stated as to who are.

C. & N. W. Ry. Co. v. Snyder, 117 Ill. 378.

Engineer and laborer unloading car—not—rule.

Rolling Mill Co. v. Johnson, 114 Ill. 59.

Train crew and laborer unloading car—held not.

C., B. & Q. R. R. Co. v. Bell, 112 Ill. 360.

Baggage master and car inspector—held not.

I. & St. L. R. R. Co. v. Morganstein, 106 Ill. 216.

#### **d. Contract Relation Necessary to Raise Question.**

Question of is raised only in action against master by servant.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9.

#### **e. Held Shown to be.**

Fellow-servantship held shown.

Chaplin v. Ill. T. R. R. Co., 227 Ill. 169.

Locomotive engineer and brakeman held to be.

C. & A. R. R. Co. v. Bell, 209 Ill. 25.

Evidence of held sufficient.

Ill. Steel Co. v. Caffey, 205 Ill. 206.

C. C. Ry. Co. v. Leach, 208 Ill. 198.

Consolidated Coal Co. of St. L. v. Fleischbein, Admr., 207 Ill. 593.

Ill. Southern Ry. Co. v. Marshall, Admr., 210 Ill. 562.

Painter loosened rope of another painter's scaffold by mistake—held fellow-servants.

World's Col. Exposition v. Lehigh, 196 Ill. 612.

Operator of circular saw and his helper held to be.

Pagels v. Meyer, 193 Ill. 172.

Conductor and fireman on same train held to be, ordinarily.

Meyer v. I. C. R. R. Co., 177 Ill. 591.

Switching crews in same yards held to be.

C. & E. I. R. R. Co. v. Driscoll, 176 Ill. 330.

Foreman and servant acting under his immediate orders are not.

Offutt v. Col. Exposition, 175 Ill. 472.

When foreman is a fellow-servant.

Gall v. Beckstein, 173 Ill. 187.

Engineer and fireman on different sections of a freight train made up of two engines—rear end collision.

Leeper v. T. H. & I. R. R. Co., 162 Ill. 215.

When servants are fellow-servants—a car repairer and engineer held to be.

Valtez v. O. & M. Ry. Co., 85 Ill. 500.

Brakeman on freight train and engineer held to be fellow-servants.

C. & A. R. R. Co. v. Rush, 84 Ill. 570.

Fellow-servant—rule as to—engineer and superintendent held not to be.

T. W. & W. Ry. Co. v. Moore, 77 Ill. 217.

Engineer, brakeman and shoveler of gravel train held to be fellow-servants.

St. L. & S. E. Ry. Co. v. Britz, 72 Ill. 256.

Brakeman and engineer on same train held to be fellow-servants.

I. C. R. R. Co. v. Keen, Admx., 72 Ill. 512.

Fellow-servants—rule as to who are.

C., B. & Q. Ry. Co. v. Gregory, 58 Ill. 272.

Track repairer and engineer held fellow-servants, though under different foremen—rule stated.

C. & A. R. R. Co. v. Murphy, 53 Ill. 336.

Rule as to fellow-servants—laborer on construction train and engineer—held to be.

C. & A. R. R. Co. v. Keefe, 47 Ill. 108.

Engineer and laborer of wood train held to be.

I. C. R. R. Co. v. Cox, 21 Ill. 20.

Brief as to who are fellow-servants.

Honner v. I. C. R. R. Co., 15 Ill. 550.

**g. When Question of, not Involved.**

Fellow-servant rule is not involved where the injury results from an order of the foreman. (Following 174 Ill. 352.)

*Hirsh & Sons' Iron & R. Co. v. Coleman*, 227 Ill. 149.

Not involved where miner is injured because of defective ventilation.

*Wilmington & S. Coal Co. v. Sloan*, 225 Ill. 467.

Question of—held not involved.

*Slegel, Cooper & Co. v. Trcka*, 218 Ill. 559.

When not involved.

*C. & A. R. R. Co. v. Eaton, Admr.*, 194 Ill. 441.

*Ide et al. v. Fratcher*, 194 Ill. 552.

*C. & A. R. R. Co. v. Maroney*, 170 Ill. 521.

Not involved where section-hand removed rail and failed to warn engineer on approaching train which was derailed.

*C. & A. R. R. Co. v. Eaton, Admx.*, 194 Ill. 441.

Not involved where emery wheel broke a piece striking and killing employe.

*Ide v. Fratcher*, 194 Ill. 552.

Not involved where banks of sewer cave in on workmen—when.

*City of La Salle v. Kostka*, 190 Ill. 131.

Not involved where defective scaffolding fell—when.

*C. & A. R. R. Co. v. Maroney*, 170 Ill. 521.

Rule of does not apply in case of child.

*Hinckley v. Horazdowsky*, 133 Ill. 359.

When rule as to has no application.

*C. & E. I. R. R. Co. v. O'Connor*, 119 Ill. 538.

Fellow-servantship does not apply where railroad bridge is allowed to become out of repair.

*T. P. & W. Ry. Co. v. Conroy*, 68 Ill. 560.

The rule as to fellow-servants applies to miners.

*Gartland v. T. W. & W. Ry. Co.*, 67 Ill. 498.

**h. When Master Liable though Injury caused by.**

Joint negligence of master and—master held.

*Ide et al. v. Fratcher*, 194 Ill. 552.

When master is liable because of injury from negligence of.

*Monmouth M. & M. Co. v. Erling*, 148 Ill. 521.

What proof is necessary to establish relation of.

*C. & E. I. R. R. Co. v. Kneirim*, 152 Ill. 438.

*Wenona Coal Co. v. Holmquist*, 152 Ill. 581.

Who are—rule stated.

*Wenona Coal Co. v. Holmquist*, 152 Ill. 581.

Who are—who are not—rule—cases reviewed.

*Monmouth M. & M. Co. v. Erling*, 148 Ill. 521.

*Stafford v. C., B. & Q. R. R. Co.*, 114 Ill. 244.

*C. & N. W. Ry. Co. v. Moranda*, 93 Ill. 302.

*Joliet Steel Co. v. Shields*, 134 Ill. 209.

*C. & N. W. Ry. Co. v. Moranda*, 108 Ill. 576.

Who are—rule stated—track repairer and converting mill man in steel mill—not.

*Joliet Steel Co. v. Shields*, 146 Ill. 603

Who are—rule stated.

*C. N. W. Ry. Co. v. Snyder*, 117 Ill. 378.

*Rolling Mill Co. v. Johnson*, 114 Ill. 59.

*Stafford v. C., B. & Q. R. R. Co.*, 114 Ill. 244.

All members of wrecking crew held to be.

*Abend v. T. H. & I. R. R. Co.*, 111 Ill. 202.

Flagman and switching crew—when they are—rule.

*C. & E. I. R. R. Co. v. Geary*, 110 Ill. 383.

Gang boss and laborer—held to be—when.

*C. & A. R. R. Co. v. May, Admx.*, 108 Ill. 288.



**i. Instruction as to.**

(See INSTRUCTIONS.)

Instruction held not properly defining fellow-servant.

Whitney & S. Co. v. O'Rourke, 172 Ill. 177.

That two servants are, may not be declared in an instruction—fact for jury.

C. & E. I. R. R. Co. v. Kneirim, 152 Ill. 438.

**j. Is a Question of Fact—When.**

Is a question of fact settled by appellate court.

Pittsburg Bridge Co. v. Walker, 170 Ill. 550.

I. C. R. R. Co. v. Reardon, 157 Ill. 373.

Is a question of fact for jury and appellate court.

I. C. R. R. Co. v. Reardon, 157 Ill. 372.

C. & A. R. R. Co. v. O'Brien, 155 Ill. 630.

When a question of fact—engineer ran into open switch—held not.

C. & W. I. R. R. Co. v. Flynn, 154 Ill. 448.

Is fact for jury and appellate court.

M. & O. R. R. Co. v. Godfrey, 155 Ill. 78.

C. & A. R. R. Co. v. O'Brien, 155 Ill. 630.

C. W. I. R. R. Co. v. Flynn, 154 Ill. 448.

When a question of fact.

M. & O. R. R. Co. v. Massey, 152 Ill. 144.

Goldie v. Werner, 151 Ill. 552.

When a question of fact—held not.

M. & O. R. R. Co. v. Massey, 152 Ill. 144.

Question of fact for jury and appellate court.

Pullman Palace Car Co. v. Bluhm, 109 Ill. 20.

**k. Pleadings as to—What Required.**

Where pleadings allege injury from negligence of other servants, they should allege non-fellow-servantship.

Schillinger Bros. Co. v. Smith, 225 Ill. 74.

Declaration need not allege that plaintiff was not.

C. & A. R. R. Co. v. Swan, 176 Ill. 424.

Hess v. Rosenthal, 160 Ill. 621.

Cribben v. Callaghan, 156 Ill. 549.

Averment of non-fellow-servantship and plea of not guilty—effect of.

Wenona Coal Co. v. Holmquist, 152 Ill. 581.

Pleadings must show non-fellow-servantship.

Joliet Steel Co. v. Shields, 134 Ill. 209.

**l. When Negligence is of Incompetent Fellow-servant.**

Incompetence of—when danger from not assumed.

U. S. Rolling Stock Co. v. Wilder, 116 Ill. 100.

**m. Practice as to—Saving—Burden of Proof, etc.**

Question of —how saved in trial court.

Coal Belt Elec. Ry. Co. v. Kays, 217 Ill. 340.

Burden of proof to show is on defendant.

Hartley v. C. & A. R. R. Co., 197 Ill. 440.

Is matter of defense that must be proved by the defendant.

C. & A. R. R. Co. v. House, 172 Ill. 601.

**HORSES FRIGHTENED.**

**Horse frightened by train rushing by—no whistle.** Plaintiff was approaching railroad crossing. Looked and listened. Heard nothing. When near track train rushed by frightening horses. Plaintiff thrown from wagon. Judgment \$2,625. Affirmed.

Ill. Southern Ry. Co. v. Hager, 225 Ill. 613.

**Horses frightened by steam from locomotive.** Driver thrown off—left arm broken. Was riding on a box on heavily loaded wagon. Three trials. Judgment \$3,000. Affirmed.

C., R. I. & P. Ry. Co. v. Steckman, 224 Ill. 500.

**Train frightened mules—jumped before engine.** Passenger train ran up at high speed without warning and frightened team of mules, which jumped in front of car and were injured. Judgment for plaintiff. Affirmed.

C. & E. I. R. R. Co. v. Crose, 214 Ill. 602 (4-05).

**Motor car frightened horse—ran away.** Railroad motor car frightened horse at crossing. Horse tipped buggy over injuring plaintiff. No warning of motor car. Plaintiff looked but could not see car because of high bank. Judgment \$2,000. Affirmed.

Ill. Cent. R. R. Co. v. Sheffner, 209 Ill. 9 (4-04).

**Steam from switch engine frightened horses.** Employee of stockyard company was unloading stock from cars. Horses had to be taken across track of defendant. Switch engine with steam escaping ran onto crossing frightening horses. Knocked down and trampled on plaintiff. Judgment for plaintiff. Affirmed.

P C. C. & St. L. R. R. Co. v. Rolson, 204 Ill. 254 (10-03).

**Locomotive whistle frightened horse—ran away.** As to motion on new trial. (See 91 Ill. App. 103). Locomotive whistle frightened horse—ran away—high weeds. Judgment \$1,200. Affirmed.

C., B. & Q. R. R. Co. v. Haselwood, 194 Ill. 69 (12-01).

**Horse frightened by car—ran away—leg and collar-bone broken.** Plaintiff was driving horse on bridge. Tram car of defendant came from opposite direction on to bridge, frightening horse which ran away, throwing plaintiff to ground. Plaintiff waved hand for car to stop. Leg, collar-bone and elbow point broken. Judgment \$2,000. Affirmed.

Pioneer Fireproof Con. Co. v. Sunderland, 188 Ill. 341 (12-00).

**Cinders dumped at crossing frightened horse.** Railroad dumped cinders along track at road crossing. Plaintiff was driving horse over crossing. Became frightened at cinder pile and ran away throwing plaintiff out. Weeds along track hid cinders until near them. Judgment for plaintiff. Affirmed.

Ill. Cent. R. R. Co. v. Griffin, 184 Ill. 9 (2-00).

**Horse frightened by train ran into plaintiff's horse.** Plaintiff was waiting for train to move off crossing. Was driving horse. Cars on track more than ten minutes. Suddenly started up, frightening another horse which ran into plaintiff throwing her out. Question of proximate cause. Judgment \$1,500. Reversed in appellate court. Held negligence of defendant not proximate cause. Affirmed by supreme court.

Coker v. Wabash R. R. Co., 183 Ill. 223.

**Horse frightened—driving over bridge above railroad.** Train ran under bridge over which plaintiff was driving horse, frightening horse,—thrown to ground—no bell or whistle. Construction of statute. Warning not required at bridge. Judgment \$1,500. Reversed; no negligence of defendant.

C. C. C. & St. L. Ry. Co. v. Halbert, 179 Ill. 196 (4-99).

**Car on side track in street—horse frightened.** Freight car stood partly in public street. Thrown out of buggy. Judgment \$1,000. Affirmed.

B. & O. S. W. Ry. Co. v. Farth, 175 Ill. 58.

**Horses frightened by train at crossing.** Train going at prohibited speed frightened horses driven by plaintiff. He was thrown out and his shoulder broken. Violation of speed ordinance and statute. Judgment \$1,500. Affirmed (68 Ill. App. 355, affirmed).

I. C. R. R. Co. v. Crawford, 169 Ill. 554.

**Horses frightened by steam from engine.** Driver thrown out and injured. Judgment \$2,500. Affirmed.

C. & A. R. R. Co. v. Heinrich, 157 Ill. 388.

**Horse frightened by blowing of whistle wilfully done by engineer.** Judgment \$2,000. Reversed and remanded because of misleading instruction on wilful negligence.

Wabash R. R. Co. v. Speer, 156 Ill. 244.

**Horses frightened by engine running at prohibited speed through village.** Ran away throwing driver to ground. Judgment for plaintiff. Affirmed.

C. & E. J. R. R. Co. v. Bivans, 142 Ill. 402.

**Drove of mules crossing bridge** became frightened and ran against lady on the foot path of the bridge, crushing her against the railing. No rail or guard between foot path and wagon road to protect pedestrians. Nervous shock causing permanent injury. Judgment \$1,800. Affirmed.

St. Louis Bridge Co. v. Miller, 138 Ill. 465.

**Horses frightened by train coming suddenly round curve.** Whirled around upon plaintiff who was driving plow to which horses were hitched. Trees and bushes hid train from view. No bell or whistle. Crossing near. Demurrer to declaration sustained. Affirmed on ground that railroad company owed no duty to plaintiff to ring bell or blow whistle.

Williams v. C. & A. R. R. Co., 135 Ill. 491.

**Horses frightened while crossing track** by engine backing down and suddenly blowing whistle. Stationary cars on track hid view. Flagman motioned plaintiff to cross. Series of ten or twelve tracks. Plaintiff jumped and was injured. Four trials. Judgment \$3,000. Affirmed.

Pennsylvania Co. v. Sloan, 125 Ill. 72.

**Horses frightened by high speed of train at street crossing.** Driver thrown out. Statute as to speed construed. Ordinance. Judgment \$100. Affirmed.

C. & E. J. Ry. Co. v. People, 120 Ill. 667.

**Horse frightened.** Team of horses approaching crossing frightened by sounding of whistle. Wanton and malicious negligence. Driver thrown out and injured. Judgment \$4,000. Remittor \$2,500. Affirmed.

C., B. & Q. R. R. Co. v. Dickson, 88 Ill. 431.

**Horses ran away.** Boy threw missile striking and frightening horses. The driver jumped out and caught them by the head. They got away from him and ran over plaintiff. Action against owner of horses. Judgment for defendant. Affirmed.

Stendle v. Rentschler, 64 Ill. 161.

**Horse frightened by willful blowing of whistle.** Plaintiff was approaching railroad crossing when the engineer wilfully commenced to whistle with sharp, shrill sounds, which frightened plaintiff's horses. They ran away upsetting buggy and severely injuring him. Judgment \$1,000. Affirmed.

C., B. & Q. Ry. Co. v. Dickson, 63 Ill. 151.

**Horses frightened ran away.** Engineer blew whistle; engine standing on railroad crossing. Plaintiff thrown out. Ankle sprained. Judgment \$1,525. Reversed as excessive.

C., B. & Q. R. R. Co. v. Dunn, 52 Ill. 451.

**Horse frightened by engine letting off steam.** Ran away, throwing driver out. Cases reviewed as to liability of master for acts of servants. Judgment \$500. Affirmed.

T. W. & W. R. R. Co. v. Hannon, 47 Ill. 298.

**Runaway horses ran over plaintiff.** Horses ran away because of defendant's negligence. Judgment for plaintiff. Affirmed.

Cox v. Brackett, 41 Ill. 222.

**INDEPENDENT CONTRACTOR—CASES.**

**Independent contractor.** Plaintiff was walking near a wall of building being constructed for owner. Wall fell upon his arm—amputation. Action against owner and contractor. Judgment for plaintiff. Reversed on the ground that judgment against the owner was unauthorized.

Hale v. Johnson, 80 Ill. 185.

**Defective derrick fell.** Independent contractor erecting building for owner. Action brought against owner for injury caused by negligence. Judgment \$600. Reversed on ground that it was not shown that the owner had charge of the building.

Perry State L. & T. Co. v. Dolg, 70 Ill. 52.

**Excavation in street by contractor.** Owner of lot employed defendant to build a house for him. He dug cellar on the premises but neglected to guard it. Plaintiff while passing along street fell into the cellar and was injured. He sued owner and obtained judgment for \$1,200. This action is by the owner against the contractor to recover the amount of judgment. Judgment for defendant. Reversed on the ground that the contract showed that the contractor had full charge of the work, releasing the owner from liability.

Pfau v. Williamson, 63 Ill. 16.

**Defective ladder broke.** Carpenter built the ladder for his own use. It was used by deceased and broke while he was on it, throwing him to the ground. The owner of the premises employed both men to do—one carpenter work, the other mason work. The owner had nothing to do with making the ladder. Action by father for death of son. Demurrer to Narr. sustained. Affirmed,—holding action should be against the carpenter.

Mercer v. Jackson, 54 Ill. 397.

**Independent contractor doing brick work on building.** Architect superintended the work. Building blown down before roofed; fell upon plaintiff's house, killing wife and child and injuring him. Plans defective. Action against the contractor. Judgment \$3,000. Reversed on ground contractor not liable for defective plans.

*Daegling v. Gilmore*, 49 Ill. 248.

First case in which relation of was involved.

*Scammon v. City of Chicago*, 25 Ill. 361.

#### **Law as to.**

Negligence of—does not excuse owner of elevator which was run down on plaintiff working in shaft.

*Siegel, Cooper & Co. v. Norton*, 209 Ill. 201.

Contractor building a sewer in an alley under supervision of city officials held to be.

*Foster, Admr., v. City of Chicago*, 197 Ill. 264.

How the question who is is to be determined.

*Foster, Admr., v. City of Chicago*, 197 Ill. 264.

Exception to rule that owner is not liable for negligence of.

*N. C. St. Ry. Co. v. Dudgeon*, 184 Ill. 477.

Who is—liability of to servant.

*Pioneer Fireproof Co. v. Hansen*, 176 Ill. 100.

Who is—owner of building not liable.

*Whitney & S. Co. v. O'Rourke*, 172 Ill. 177.

Construction company employed by Gas company to connect mains, is not—where Gas company has control of the gas in the mains.

*Chicago Economic Gas Co. v. Myers*, 168 Ill. 139.

Owner held liable for death of employe of independent contractor, where building has been partially turned over. Explosion of steam-pipe.

*Webster Mfg. Co. v. Mulvanny*, 168 Ill. 311.



Driver of delivery wagon held to be employe of contractor who did delivering for defendant.

*Foster v. Wadsworth*, 168 Ill. 514.

Who is—rule as to repairs made in house by contractor.

*Jefferson v. Jameson & Morse Co.*, 165 Ill. 138.

Who is—liability of city for acts of.

*Village of Jefferson v. Chapman*, 127 Ill. 439.

When the owner of premises is not liable for negligence of contractor excavating sidewalk.

*Kepperly v. Ramsden*, 83 Ill. 354.

Owner is not liable for negligence of contractor—when—independent contractor—who is—facts held to show.

*Hale v. Johnson*, 80 Ill. 185.

Independent contractor—held facts do not show.

*Glickauf v. Maurer*, 75 Ill. 289.

Contractor placing obstruction in public street is liable for injury resulting therefrom.

*Weick v. Lander.*, 75 Ill. 93.

Independent contractor—rule as to—who is.

*Perry State L. & T. Co. v. Doig*, 70 Ill. 52.

Where an owner is sued and judgment secured against him he has an action back against independent contractor—owner of property is not liable for injury due to negligence of independent contractor.

*Pfau v. Williamson*, 63 Ill. 16.

Independent contractor facts held to show relation—owner not liable.

*Pfau v. Williamson*, 63 Ill. 16.

Independent contractor of City Hall—held not to be—plans submitted by city. Board of Public Works in control.

*City of Chicago v. Dermody*, 61 Ill. 431.

Owner—when not liable for negligence of carpenter contractor.

*Mercer v. Jackson*, 54 Ill. 397.

That sewer is being built by contractor does not release city.

*City of Springfield v. LeClaire*, 49 Ill. 476.

Owner and contractor jointly liable where the plan of construction is defective.

*Schwartz v. Gilmore*, 45 Ill. 455.

Independent contractor—held not where architect acts as superintendent for owner.

*Schwartz v. Gilmore*, 45 Ill. 455.

Independent contractor—relation held shown—rule as to—fell into hole in sidewalk.

*Scammon v. City of Chicago*, 25 Ill. 361.

**INSPECTION—LAW AS TO.**

Servant is not required to make.

Schillinger Bros. Co. v. Smith, 225 Ill. 74.

Grace & Hyde Co. v. Sanborn, 225 Ill. 138.

Of mines—what is required by the statute.

Spring Valley Coal Co. v. Greig, 226 Ill. 511.

Servant not required to make.

Belt Ry. Co. Confrey, 209 Ill. 344.

Of cars—master under duty to make.

Belt Ry. Co. v. Confrey, 209 Ill. 344.

What is evidence of duty of master to make?

Wrisley Co. v. Burke, 203 Ill. 250.

Evidence of time and manner of—as showing due diligence in making—good.

I. C. R. R. Co. v. Prickett, 210 Ill. 140.

Duty of defendant to make, shown.

C & A. R. R. Co. v. Walters, 217 Ill. 87.

For defects, is not required of the servant, but is the duty of the master.

Hinrod Coal Co. v. Clark, 197 Ill. 514.

Servant not required to make.

Ross et al. v. Shanley, 186 Ill. 390.

Duty of mine owner to make under Mine Act—scope of.

Pawnee Coal Co. v. Royce, 184 Ill. 402.

Servant is not required to make but must take note of patent dangers.

Pennsylvania Coal Co. v. Kelly, 156 Ill. 9

Leonard v. Kinnare, 174 Ill. 532.

Hines Lumber Co v. Ligas, 172 Ill. 315.

Is not excused by any presumption.

C. & N. W. Ry. Co. v. Gillison, 173 Ill. 264.

Servant not required to make—defective track—train derailed.

L. S. & M. S. Ry. Co. v. Conway, 169 Ill. 505.

Brakeman not required to make of track—hole between ties.

I. C. R. R. Co. v. Sanders, 166 Ill. 270.

Is a personal duty of the master.

Sack v. Dolese, 137 Ill. 129.

C. & E. I. R. R. Co. v. Kneirim, 152 Ill. 438.

Mere fact that master has inspected does not excuse him for injury.

C. P. & St. L. Ry. Co. v. Lewis, 145 Ill. 67.

Not required of servant unless servant has notice that something is wrong.

C. & E. I. Ry. Co. v. Hines, 132. Ill. 162.

By defendant does not relieve plaintiff of any duty.

C. & A. R. R. Co. v. Bragonier, 119 Ill. 51.

Evidence that inspection has been made—when immaterial.

Rolling Mill Co. v. Johnson, 114 Ill. 59.

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**a. Assuming Facts Not Proven—Rules as to.**

*Parmalee Co. v. Wheelock*, 224 Ill. 194.

May assume uncontroverted fact as true.

*C. C. Ry. Co. v. Carroll*, 206 Ill. 318.

Assuming a fact—properly refused.

*Chicago Screw Co. v. Weiss*, 203 Ill. 536.

Assuming fact not in evidence—bad.

*C. & A. R. R. Co. v. Gore*, 202 Ill. 188.

Assuming controverted fact—bad.

*Donk Bros. Coal Co. v. Stroff*, 200 Ill. 483.

When does not assume plaintiff was a passenger.

*S. C. C. Ry. Co. v. Dufresne*, 200 Ill. 456.

Assuming knowledge of danger—held bad.

*City of LaSalle v. Kostka*, 190 Ill. 131.

Assuming fact—may be cured by others.

*City of Dixon v. Scott*, 181 Ill. 116.

Assuming a fact—held reversible error shown.

*Sugar Creek Mining Co v. Peterson*, 177 Ill. 324.

Saying plaintiff might assume sidewalk was safe—approved.

*City of E. Dubuque v. Burhyte*, 173 Ill. 553.

In which negligence is assumed is bad.

*C. C. C. & St. L. Ry. Co. v. Best*, 169 Ill. 301.

Stating that certain fact may be assumed—bad.

*L. N. A. & C. Ry. Co. v. Patchen*, 167 Ill. 204.

Assuming an unproved fact—bad.

*Ill. Steel Co. v. Schymanowski*, 162 Ill. 447.

Assuming a fact—when not erroneous.

*Gerke v. Fancher*, 158 Ill. 377.

**May assume facts of common knowledge.**

Harris v. Shebek, 151 Ill. 287.

City of Joliet v. Shufeldt, 144 Ill. 403.

**May assume fact not denied.**

City of Chicago v. Moore, 139 Ill. 201.

**Assuming facts showing negligence—erroneous.**

C. R. I. & P. Ry. Co. v. Felton, 125 Ill. 458.

**Assuming a fact not proven is harmful.**

C. B. & Q. R. R. Co. v. Warner, 123 Ill. 38.

**Held not to assume a fact.**

C. & N. W. Ry. Co. v. Goebel, 119 Ill. 516.

**Must not misstate facts.**

C. & A. R. R. Co. v. Bragonier, 119 Ill. 51.

**Whether assuming fact—rule considered.**

C. & N. W. Ry. Co. v. Snyder, 117 Ill. 378.

**Held not to assume there was negligence.**

Calumet I. & S. Co. v. Martin, 115 Ill. 359.

**When not assuming street was unsafe.**

City of Chicago v. Sheehan, 113 Ill. 658.

**When facts not assumed by.**

Mullin et al. v. Spangenberg, 113 Ill. 140.

**Held not to assume fact.**

Village of Warren v. Wright, 103 Ill. 298.

**“Due and proper care” in—submits question of fact.**

Schmidt v. Sinnott, 103 Ill. 160.

**Must not assume facts not proved.**

C. W. D. Ry. Co. v. Mills, 91 Ill. 39.

**b. On Assumed Risk.****On when question of assumed risk is involved.**

E. J. & E. Ry. Co. v. Myers, 226 Ill. 358.

**On assumed risk by plaintiff—approved.**

E. J. & E. Ry. Co. v. Myers, 226 Ill. 358.

General instruction not referring to assumed risk is good if the declaration negatives assumed risk—held negatived.

Kirk & Co. v. Jajko, 224 Ill. 338.

Leaving out rule as to assumed risk—bad.

Ill. Terra Cotta L. Co. v. Hanley, 214 Ill. 243.

As to dangers assumed by plaintiff—approved.

Shickle-Harrison & H. Iron Co. v. Beck, 212 Ill. 268.

On assumed risk.

Ill. Terminal R. Co. v. Thompson, 210 Ill. 226.

On assumption of risk.

C. W. & V. Coal Co. v. Moran, 210 Ill. 9.

As to duty of master and assumption of risk—too broad.

Wells v. O'Hara, Admr., 209 Ill. 627.

As to assumed risk—properly refused.

Cobb Chocolate Co v. Knudson, 207 Ill. 452.

As to assumed risk—reversible error.

C. & E. I. R. R. Co. v. Heerey, Admr., 203 Ill. 492.

On assumed risk—order of foreman—inexperienced man—approved.

Illinois Steel Co. v. Ryska, 200 Ill. 280.

On assumed risk—reversal because refused.

Ill. Steel Co. v. Mann, 170 Ill. 200.

On assumed risk—approved as modified.

Libby, McNeill & Libby v. Scherman, 146 Ill. 541.

### c. Embodying Abstract Law.

Embodying abstract law may be refused.

C. C. Ry. Co. v. Anderson, 193 Ill. 9.

C. & P. St. Ry. Co. v. Brown, 193 Ill. 274.

Stating abstract law not objectionable.

Western Tube Co. v. Polobinski, 192 Ill. 113.

Taylor v. Felsing, 164 Ill. 331.



Containing abstract law refusal discretionary.

A. T. & S. F. R. R. Co. v. Feehan, 149 Ill. 202.

Abstract proposition harmless unless misleading.

C. B. & Q. R. R. Co. v. Dickson, 143 Ill. 368.

Abstract—not objectionable unless misleading.

Betting et al. v. Hobbett, 142 Ill. 72.

Abstract—not reversible error unless misleading.

Town of Wheaton v. Hadley, 131 Ill. 640.

#### **d. On Circumstantial Evidence.**

As to value of circumstantial evidence—approved.

U. S. Brewing Co. v. Stoltenberg, Admr., 211 Ill. 531.

On circumstantial evidence—badly drawn—no prejudice.

C. C. Ry. Co. v. Nelson, 215 Ill. 436.

As to circumstantial evidence—approved.

N. C. St. Ry. Co. v. Rodert, 203 Ill. 413.

#### **e. On Comparative Negligence.**

On comparative negligence—not reversible error.

Pioneer Fireproof Con. Co. v. Sunderland, 188 Ill. 341.

Comparative negligence—giving one on not reversible.

C. B. & Q. R. R. Co. v. Levy, 160 Ill. 385.

C. & A. R. R. Co. v. Matthews, 153 Ill. 268.

On comparative negligence held not harmful.

C. B. & Q. R. R. Co. v. Warner, 123 Ill. 38.

Of instruction on comparative negligence.

C. B. & Q. R. R. Co. v. Johnson. Admr., 103 Ill. 512.

#### **f. On Care and Duty of Defendant.**

Instruction that master must use ordinary care and prudence to provide safe place and to use all reasonable precautions to

keep premises safe does not impose too great a care on the master.

*Deering v. Barzak*, 227 Ill. 71.

Defining duty of street car company as a carrier of passengers.

*C. C. Ry. Co. v. Shreve*, 226 Ill. 530.

As to care required by carrier of passengers—approved.

*C. C. Ry. Co. v. Pural*, 224 Ill. 686.

*Parmalee Co. v. Wheelock*, 224 Ill. 194.

*C. & A. R. R. Co. v. Byrum*, 153 Ill. 131.

On care required for safety of passengers—approved.

*C. U. T. Co. v. Lowenrosen*, 222 Ill. 506.

*Chicago Con. T. Co. v. Schritter*, 222 Ill. 364.

On care required by carrier street railway disapproved.

*C. U. T. Co. v. Yarns*, 221 Ill. 641.

As to care required of carrier approved.

*Chicago City Ry. Co. v. Shaw*, 220 Ill. 532.

As to care for passengers required—approved.

*Chicago City Ry. Co. v. Schmidt*, 217 Ill. 396.

As to care required by company—bad.

*Tri. City Ry. Co. v. Gould*, 217 Ill. 317.

On duty to look out for street car.

*C. C. Ry. Co. v. Nelson*, 215 Ill. 436.

As to duty of motorman to stop for defendant—approved.

*C. U. T. Co. v. Leach*, 215 Ill. 184.

On duty of common carriers approved.

*C. C. Ry. Co. v. Bundy*, 210 Ill. 39.

As to defendant's duty—approved as modified.

*Barnett & Record Co. v. Schlapka*, 208 Ill. 426.

As to care required by plaintiff and defendant—disapproved.

*Illinois Steel Co. v. Wierzbicky*, 206 Ill. 201.

As to duty of defendant questionable but not injurious.

*Illinois Steel Co. v. Wierzbicky*, 206 Ill. 201.

**On duty of defendant to warn plaintiff—approved.**

**Chicago Screw Co. v. Weiss, 203 Ill. 536.**

**As to care required by carrier—improperly refused.**

**N. C. St. Ry. Co. v. Polkey, Admr., 203 Ill. 225.**

**As to care required by intoxicated person—bad.**

**S. C. C. Ry. Co. v. Dufresne, 200 Ill. 456.**

**As to ringing bell and blowing whistle—approved.**

**C. B. & Q. R. R. Co. v. Pollock, 195 Ill. 156.**

**As to care required by carriers approved.**

**W. C. St. Ry. Co. v. Kromshinsky, 185 Ill. 92.**

**Duty of carriers to passengers approved.**

**C. & A. R. R. Co. v. Pillsbury, 123 Ill. 11.**

**As to duty of master on building under construction.**

**Whitney & S. Co. v. O'Rourke, 172 Ill. 177.**

**As to care of sidewalks approved.**

**City of Sandwich v. Dolan, 141 Ill. 432.**

**As to duty to instruct as to danger approved.**

**Chicago Anderson Pressed Brick Co. v. Reinneiger, 140 Ill. 334.**

**Duty of railroad at crossings—approved.**

**C. & A. R. R. Co. v. Dillon, 123 Ill. 571.**

**Duty of railroad company as to car of another company in its yards approved.**

**C. B. & Q. R. R. Co. v. Avery, 109 Ill. 314.**

### **g. On Contributory Negligence and Due Care.**

#### **Approved.**

**As to due care in place of danger approved.**

**Elgin, J. & E. Ry. Co. v. Hoodley, Admx., 220 Ill. 463.**

**That due care and negligence are for jury approved.**

**C. J. Elec. Ry. Co. v. Patton, 219 Ill. 215.**

**On ordinary care—for plaintiff—approved.**

**So. Chicago City Ry. Co. v. Kinnare, Admr., 216 Ill. 451.**

On ordinary care—refusal of error.

Cullen v. Higgins, 216 Ill. 78.

Defining ordinary care—approved.

Christy v. Elliott, 216 Ill. 31.

As to sudden danger—approved.

C. U. T. Co. v. Newmiller, 215 Ill. 383.

As to ordinary care at time of injury—approved.

Chicago No. Shore St. Ry. Co. v. Strathman, 213 Ill. 252.

As to contributory negligence—modified—approved.

C. & E. I. R. R. Co. v. Coggins, 212 Ill. 369.

On contributory negligence—getting off moving car.

C U. T. Co. v. Hawthorn, 211 Ill. 367.

On sudden danger.

C. U. T. Co. v. Reuter, 210 Ill. 279.

On ordinary care.

C. C. Ry. Co. v. Bundy, 210 Ill. 39.

As to negligence of father—injury to son.

C. W. & V. Coal Co. v. Moran, 210 Ill. 9

Of contributory negligence where plaintiff had equal means of knowing.

Belt Ry. Co. v. Chicago v. Confrey, 209 Ill. 344.

As to operating unusual machine.

I. C. R. R. Co. v. Sheffner, 209 Ill. 9.

On ordinary care by defendant improperly refused.

C. C. Ry. Co. v. O'Donnell, Admr., 208 Ill. 267.

On ordinary care before and at the time of injury approved.

C. C. Ry. Co. v. O'Donnell, Admr., 208 Ill. 267.

On contributory negligence—by court—approved.

P. C. C. & St. L. R. R. Co. v. Robson, 204 Ill. 254.

As to contributory negligence—refusal of reversible error.

Mallen v. Waldowski, 203 Ill. 87.

As to contributory negligence—refusal of reversible error.

Lake St. Elevated R. R. Co. v. Shaw, 203 Ill. 39.

On negligence of parent for plaintiff—approved—child struck by car.

True & True Co v. Woda, 201 Ill. 315.

As to due care by plaintiff approved.

C. & A. R. R. Co. v. Corson, 198 Ill. 98.

St. Louis Nat. Stock Yards v. Godfrey, 198 Ill. 288.

On ordinary care by plaintiff approved.

C. & A. R. R. Co. v. Cullen, Admr., 187 Ill. 523.

On exercise of ordinary care by plaintiff properly modified.

I. C. R. R. Co. v. Anderson, 184 Ill. 294.

On ordinary care by plaintiff approved.

Donley v. Dougherty, 174 Ill. 582.

On ordinary care by plaintiff held not harmful.

Calumet Elec. Ry. Co. v. Van Pelt, 173 Ill. 70.

As to exercise of due care by plaintiff approved.

W. C. St. Ry. Co. v. McNulty, 166 Ill. 203.

May omit reference to due care where not questioned.

St. L. A. & T. H. R. R. Co. v. Holman, 155 Ill. 21.

Stating what facts would be contributory negligence proper where such facts are clearly a bar.

Hoehn v. C. P. & St. L. Ry. Co., 152 Ill. 224.

On exercise of due care by plaintiff approved.

L. S. & M. S. Ry. Co. v. Ouska, 151 Ill. 232.

On due care approved.

P. D. & E. Ry. Co. v. Rice, 144 Ill. 227.

As to due care in dangerous place.

C & A. R. R. Co. v. Fisher, 141 Ill. 615.

As to negligence in crossing railroad approved.

C. R. I. & P. Ry. Co. v. Clough, 134 Ill. 586.

As to due care approved as modified.

P. C. & St. L. Ry. Co. v. McGrath, 115 Ill. 172.

As to ordinary care by fireman seeing obstacle in street approved.

City of Chicago v Sheehan, 113 Ill. 658.

### **Disapproved.**

Instruction on contributory negligence of child—held erroneous.

L. E. & W. R. R. Co. v. Klinkrath, 227 Ill. 439.

As to due care improperly modified.

Toledo P. & W. Ry. Co. v. Hammett, 220 Ill. 9.

As to contributory negligence—properly refused.

C. U. T. Co. v. Leach, 215 Ill. 184.

That plaintiff must “observe” conditions—bad as requiring inspection.

Rock Island S. & D. Works v. Pohlman, 210 Ill. 133.

On ordinary care bad but cured by others.

W. C. St. Ry. Co. v. Dougherty, 209 Ill. 241.

On ordinary care at time of injury not including before—bad.

N. C. St. Ry. Co. v. Cossar, 203 Ill. 608.

That it is contributory negligence to board moving train—bad.

C. & A. R. R. Co. v. Gore, 202 Ill. 188.

Confining exercise of due care to “time of injury” bad.

C. C. Ry. Co. v. Anderson, 193 Ill. 9.

Stating facts that constitute contributory negligence bad.

C. & A. R. R. Co. v. Kelly, 182 Ill. 267.

Requiring more than ordinary care by plaintiff—bad.

City of Spring Valley v. Gavin, 182 Ill. 232.

On contributory negligence properly refused where it precludes idea that contributory negligence must be the proximate cause of injury.

Consolidated Coal Co. v. Bokamp, 181 Ill. 9.

As to ordinary care in alighting from car held properly refused.

W. C. St. Ry. Co. v. Manning, 170 Ill. 418.

As to due care in seeking to be cured bad.

C & E. R. R. Co. v. Meech, 163 Ill. 305.

That it is not negligence to ride on platform—erroneous.

I. C. R. R. Co. v. O'Keefe, 154 Ill. 508.

On contributory negligence of plaintiff disapproved.

N. C. St. Ry. Co. v. Eldridge, 151 Ill. 543.

Omitting due care reversible unless cured by others.

L. E. & W. R. R. Co. v. Morain, 140 Ill. 118.

Stating facts constituting due care properly refused.

I. C. R. R. Co. v. Slater, 139 Ill. 190.

On due care held harmful error.

N. C. St. Ry. Co. v. Louis, 138 Ill. 9.

On contributory negligence—reversible error.

T. St. L. & K. C. R. R. Co. v. Cline, 135 Ill. 42.

Telling jury what facts constitute contributory negligence, bad.

City of Chicago v. McLean, 133 Ill. 148.

Stating facts constituting contributory negligence—bad.

C. & A. R. R. Co. v. Adler, 129 Ill. 335.

On contributory negligence properly refused.

C. & N. W. Ry. Co. v. Dunleavy, 129 Ill. 135.

Due care required of minor—erroneous.

C. R. I. & P. Ry. Co. v. Eininger, 114 Ill. 79.

Stating certain facts to be contributory negligence—reversible.

Myers v. I. & St. L. Ry. Co., 113 Ill. 386.

Omitting element of due care—when harmful.

City of Peoria v. Simpson, 110 Ill. 294.

As to due care by plaintiff to discover defect in car—bad.

C. B. & Q. R. R. Co. v. Warner, 108 Ill. 538.

As to negligence in not learning of danger—bad.

C. R. I. & P. Ry. Co. v. Clark, 108 Ill. 114.

Due care omitted—when error.

W. St. L. & P. Ry. Co. v. Shacklet, 105 Ill. 364.

Stating facts constituting due care—bad.

Village of Warren v. Wright, 103 Ill. 298.

As to “looking and listening” when properly refused.

Pennsylvania Co. v. Rudel, 100 Ill. 603.

On ordinary care in alighting from car—bad.

C. C. Ry. Co. v. Mumford, 97 Ill. 560.

Ignoring due care in crossing track—bad.

C & N. W. Ry. Co. v. Dunick, Admr., 96 Ill. 42.

### **Miscellaneous.**

As to care required of one partially deaf.

Toledo P. & Q. Ry. Co. v. Hammett, 220 Ill. 9.

On ordinary care—vague and misleading.

Vocke v. City of Chicago, 208 Ill. 192.

That plaintiff may recover though contributing to injury, bad.

City of Macon v. Holcomb, 205 Ill. 643.

On contributory negligence—not in case where statute violated.

Donk Bros. Coal Co. v. Stroff, 200 Ill. 483.

### **h. On Credibility of Witnesses.**

(See also WITNESSES.)

Instruction on credibility when not invading the province of the jury.

Deering v. Barzak, 227 Ill. 71.

As to impeaching witness when bad.

C. C. Ry. Co. v. Ryan, 225 Ill. 287.



On credibility of witnesses approved.

*Henrietta Coal Co. v. Martin*, 221 Ill. 460.

*C. U. T. Co. v. Yarns*, 221 Ill. 641.

*Donk Bros. Coal & Co. v. Peton*, 192 Ill. 41.

As to credibility—criticized use of word “palpably.”

*Chicago City Ry. Co. v. Shaw*, 220 Ill. 532.

As to credibility of plaintiff approved.

*Hanchett v. Haas*, 219 Ill. 546.

As to credibility prejudicial.

*C. U. T. Co. v. O'Brien*, 219 Ill. 303.

As to credibility.

*Tri. City Ry. Co. v. Gould*, 217 Ill. 317.

On credibility—refusal of—reversible error.

*C. & E. I. R. R. Co. v. Burrige*, 211 Ill. 9.

As to credibility reversible.

*C. & A. R. R. Co. v. Kelley, Admr.*, 210 Ill. 449.

On credibility of witnesses.

*C. C. Ry. Co. v. Bundy*, 210 Ill. 39.

As to credibility and number of witnesses approved.

*N. C. St. Ry. Co. v. Wellner*, 206 Ill. 272.

As to credibility where witnesses swear differently.

*C. & E. I. R. R. Co. v. Rains, Admx.*, 203 Ill. 417.

On credibility of witnesses, giving on both sides approved.

*C. & P. St. Ry. Co. v. Brown*, 193 Ill. 274.

On credibility—“knowingly, corruptly, intentionally and willfully sworn falsely” held proper.

*C. & P. St. Ry. Co. v. Woodruff*, 192 Ill. 544.

On credibility of witnesses held bad but harmless.

*Goss Printing Press Co. v. Limpke*, 191 Ill. 199.

On credibility of witnesses bad as modified.

*City of La Salle v. Kostka*, 190 Ill. 131.

As to credibility of witnesses properly refused.

*C. C. Ry. Co. v. Mager*, 185 Ill. 336.

As to credibility of plaintiff as a witness—bad.

C. C. Ry. Co. v. Mager, 185 Ill. 336.

On credibility of witnesses properly refused.

City of Dixon v. Scott, 181 Ill. 116.

On credibility of plaintiff's testimony—reversal because of refusal of.

W. C. St. Ry. Co. v. Dougherty, 170 Ill. 379.

As to credibility of plaintiff properly refused as singling out witness.

Pennsylvania Co. v. Versten, 140 Ill. 637.

As to credibility approved.

I. C. R. R. Co. v. Haskins, 115 Ill. 302.

### **i. On Damages.**

**Approved.**

On measure of damages "value of time" for "profits" not error.

C. C. Ry. Co. v. Smith, 226 Ill. 178.

On measure of damages approved.

C. R. I. & P. Ry. Co. v. Steckman, 224 Ill. 500.

On damages for loss of instruction and moral training approved.

Goddard v.ENZler, 222 Ill. 462.

On measure of damages—mental suffering—approved.

Chicago Con. T. Co. v. Schritter, 222 Ill. 364.

No consideration of damage until case proved—approved.

W. Chicago St. Ry. Co. v. McCafferty, 220 Ill. 476.

On measure of damages approved.

National E. & S. Co. v. McCorkle, 219 Ill. 557.

As to measure of damage—approved.

City of Gibson v. Murray, 216 Ill. 589.

On measure of damage—approved.

E. J. & E. Ry. Co. v. Thomas, 215 Ill. 158.

As to measure of damage—approved.

C. & M. Elec. Ry. Co. v. Ullrich, 213 Ill. 170.

As to measure of damages—approved.

U S. Brewing Co. v. Stoltenberg, Admr., 211 Ill. 531.

As to measure of damages approved but corrected.

C. C. Ry. Co. v. Gimmell, 209 Ill. 638.

As to measure of damages approved.

Barnett & Record Co. v. Schlapka, 208 Ill. 426.

As to re-marriage of wife of deceased approved.

C. & E. I. R. R. Co. v. Driscoll, Admr., 207 Ill. 9.

As to subjective injury approved as modified.

C. U. T. Co. v. Fortier, 205 Ill. 305.

On measure of damages—approved.

Chicago Screw Co. v. Weiss, 203 Ill. 536.

As to measure of damages—approved.

C. & E. I. R. R. Co. v. Rains, Admx., 203 Ill. 417.

As to measure of damages—approved.

Wrisley Co. v. Burke, 203 Ill. 250.

As to measure of damages—approved.

Springfield C. Ry. Co. v. Puntenny, 200 Ill. 9.

On measure of damages approved.

C. & P. St. Ry. Co. v. Brown, 193 Ill. 274.

On measure of damages—approved. Mine case.

Donk Bros. Coal & C. Co. v. Peton, 192 Ill. 41.

On measure of damages approved.

C. & A. R. R. Co. v. Lewandowski, 190 Ill. 301.

On measure of damages for pain and suffering good.

C. C. Ry. Co. v. Anderson, 182 Ill. 298.

On measure of damages approved.

C. & A. R. R. Co. v. Kelly, 182 Ill. 267.

On measure of damage when proper.

W. C. St. Ry. Co. v. Foster, 175 Ill. 396.

**On measure of damages held not to assume there was damage.**

N. C. St. Ry. Co. v. Housinger, 175 Ill. 318.

**On measure of damages held not harmful.**

Calumet Elec. Ry. Co. v. VanPelt, 173 Ill. 70.

**On measure of damages approved.**

Village of Cullom v. Justice, 161 Ill. 372.

**On measure of damages approved.**

I. C. R. R. Co. v. Gilbert, 157 Ill. 354.

Best Brewing Co. v. Dunlevy, 157 Ill. 141.

St. L. A. & T. H. R. R. Co. v. Odum, 156 Ill. 78.

**On damages approved.**

Gartside Coal Co. v. Turk, 147 Ill. 120.

**For measure of damage approved.**

Consolidated Coal Co. v. Haenin, 146 Ill. 614.

**As to duty of jury to assess damage—when good.**

Consolidated Coal Co. v. Haenin, 146 Ill. 614.

**Measure of damages to next of kin—approved.**

C. M. & St. P. Ry. Co. v. O'Sullivan, 143 Ill. 48.

**As to damages held not misleading.**

L. E. & W. R. R. Co. v. Wills, 140 Ill. 614.

**Held not to authorize exemplary damage.**

Pennsylvania Co. v. Frana, 112 Ill. 398.

**On measure of damages approved.**

C. B. & Q. R. R. Co. Warner, 108 Ill. 538.

**Measure of damages—approved.**

City of Chicago v. Stearns, 105 Ill. 544.

**Disapproved.**

**On measure of damages disapproved.**

I. C. R. R. Co. v. Johnson, 221 Ill. 42.

**As to measure of damages—bad—cured by others.**

Chicago U. T. Co. v. Miller, 212 Ill. 49.

**On measure of damages bad but cured.**

C. C. Ry. Co. v. Mead, 206 Ill. 174.

As to damages—old rupture—bad.

Vocke v. City of Chicago, 208 Ill. 192.

As to damages to “widow or next of kin”—reversible.

Muren Coal & Ice Co. v. Howell, Admr., 204 Ill. 515.

On measure of damages—suit by executrix—injurious.

N. C. St. Ry. Co. v. Irwin, 202 Ill. 345.

As to measure of damages—bad.

Springfield C. Ry Co. v. Puntenny, 200 Ill. 9.

On damages held bad as permitting speculation.

Ill. Iron & M. Co. v. Weber, 196 Ill. 526.

On elements of damages bad but not reversible.

C. & A. R. R. Co. v. McDonnell, 194 Ill. 82.

On measure of damages bad but harmless.

C. C. C. & St. L. Ry. Co. v. Keenan, 190 Ill. 217.

On measure of damages disapproved.

N. C. St. R. R. Co. v. Cook, 145 Ill. 551.

On measure of damages bad as not directing to find from the evidence.

N. C. Rolling Mill Co. v. Morrissey, 111 Ill. 646.

On measure of damage misleading and harmful.

City of Peoria v Simpson, 110 Ill. 294.

Instruction as to damages—bad as allowing solace for affliction.

City of Chicago v. Scholten, 75 Ill. 469.

Instructions assuming vindictive damages may be given—bad.

Collins v. Waters, 54 Ill. 486.

Instruction as to damages to next of kin—bad.

C. & N. W. Ry. Co. v. Swett, 45 Ill. 197.

### **Miscellaneous.**

On measure of damages—elements of where minor is injured.

American Car Co. v. Hill, 226 Ill. 227.

On measure of damage.

Kellyville Coal Co. v. Strine, 217 Ill. 516.

On measure of damages.

Ill. Terminal R. Co. v. Thompson, 210 Ill. 226.

As to measure of damages—allegation of permanent injury.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

On measure of damages what should include.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9.

As to exemplary damages.

Kennedy Bros. v. Sullivan, 136 Ill. 94.

On damages need not state elements of recovery.

McMahon v. Sankey, 133 Ill. 637.

Damages—measure of—instruction as to death of miner.

Consolidated Coal Co v. Maehl, 130 Ill. 551.

As to damage should include reference to exercise of due care—when.

Village of Sheridan v. Hibbard, 119 Ill. 307.

As to measure of damages for death of miner.

Beard et al. v. Skeldon, 113 Ill. 584.

As to damages—must be based on the evidence.

C. B. & Q. R. R. Co. v. Sykes, Admx., 96 Ill. 162.

#### **j. Error in—How Waived or Cured.**

Error in is waived if not stated in motion for new trial.

C. C. Ry. Co. v. Smith, 226 Ill. 178.

Same errors in on both sides waives the error.

C. C. Ry. Co. v. Pural, 224 Ill. 686

Cicero St. Ry. Co. v. Melxner, 160 Ill. 320.

C. & A. R. R. Co. v. Sanders, 154 Ill. 532.

Erroneous cured if evidence clearly sustains verdict.

National E. & S. Co. v. McCorkle, 219 Ill. 557.

**Erroneous may be cured by clear evidence.**

**Odin Coal Co. v. Tadlock, 216 Ill. 624.**

**Same error in plaintiff's and defendant's cured.**

**Marquette Coal Co. v. Diclie, 208 Ill. 117.**

**Bad, may be cured by clear evidence.**

**City of Beardstown v. Clark, 204 Ill. 524.**

**Erroneous—cured by same error on both sides.**

**Slack v. Harris, 200 Ill. 96.**

**Error in—common to plaintiff and defendant—cured—rule of.**

**W. C. St. Ry. Co. v. Buckley, 200 Ill. 260.**

**Erroneous—error common to both sides is cured.**

**Springfield C. Ry. Co. v. Puntenny, 200 Ill. 9.**

**Error in may be cured by the evidence.**

**Best Brewing Co. v. Dunlevy, 157 Ill. 141.**

**Failure to argue error in appellate court waives objection.**

**Pennsylvania Coal Co. v. Kelly, 156 Ill. 9.**

**Error in cured by special finding to same effect.**

**L. E. & W. R. R. Co. v. Middleton, 142 Ill. 550.**

#### **k. As to Curing Error in Admission of Evidence, etc.**

**Cures error in admission of evidence when.**

**Ill. Steel Co. v. Ostrowsky, 194 Ill. 376.**

**May cure admission of improper evidence.**

**Hanewacker, v. Ferman, 152 Ill. 321.**

**When proper to control evidence.**

**L. S. & M. S. Ry. Co. v. Ward, 135 Ill. 511.**

**When erroneous instruction is not cured by good one.**

**C. B. & Q. R. R. Co. v. Harwood, 80 Ill. 88.**

**l. On Fellow-servants.**

(See also FELLOW-SERVANTS.)

Stating facts constituting fellow-servantship bad.

P. C. C. & St. L. Ry. Co. v. Bovard, 223 Ill. 176.

On fellow-servants need not refer to law as to due care.

P. C. C. & St. L. Ry. Co. v. Bovard, 223 Ill. 176.

As to fellow-servants properly refused—not involved.

Siegel, Cooper & Co. v. Trcka, 218 Ill. 559.

As to fellow-servants properly refused.

Missouri Mall. Iron Co. v. Dillon, 206 Ill. 145.

On fellow-servants—bad.

Volgt, Admx., v. Anglo-Amer. Prov. Co., 202 Ill. 462.

Of fellow-servants—held should have been given.

Pagels v. Meyer, 193 Ill. 172.

On fellow-servants—bad where question is not involved.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9.

On fellow-servants—collision of hand cars—approved.

C. & A. R. R. Co. v. O'Brien, 155 Ill. 630.

Saying two servants are not fellow-servants—bad as invading province of jury.

C. & N. W. Ry. Co. v. Moranda, Admx., 108 Ill. 576.

Instruction on fellow-servants approved.

C. & A. R. R. Co. v. Murphy, 53 Ill. 336.

Instructions as to fellow-servants approved.

I. C. R. R. Co. v. Cox, 21 Ill. 20.

**m. General For Plaintiff.**

General for plaintiff—approved.

C. J. Elec. Ry. Co. v. Patton, 219 Ill. 215.

General for plaintiff—approved.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.



General for plaintiff—good.

N. C. St. Ry. Co. v. Johnson, 205 Ill. 32

General for plaintiff where joint defendants.

Economy L. & P. Co. et al. v. Hiller, 203 Ill. 518.

General for plaintiff—approved.

Mallott, Receiver, v. Hood, 201 Ill. 202.

General for plaintiff—held good.

W. C. St. Ry. Co. v. Petters, 196 Ill. 298.

General for plaintiff—what it should include.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9.

General for plaintiff—held prejudicial.

Armour v. Brazean, 191 Ill. 117.

For plaintiff as to jumping off moving train—approved.

C. & E. I. R. R. Co. v. Storment, 190 Ill. 43.

For plaintiff need not refer to the defense made by defendant.

Mt. Olive Coal Co. v. Rademacher, 190 Ill. 538.

Instruction—general for plaintiff—defective transformer—approved.

Economy L. & P. Co. v. Stephen, Admr., 187 Ill. 137.

As to elements that must be proven—approved.

C. M. & St. P. Ry. Co. v. O'Sullivan, 143 Ill. 48.

General—held not “one sided.”

Pennsylvania Co. v. Backes, 133 Ill. 255.

General for plaintiff—approved.

L. S. & M. S. Ry. Co. v. Brown, 123 Ill. 163.

General for plaintiff—assault and battery approved.

Harrison v. Ely, 120 Ill. 83.

For plaintiff—defective sidewalk—approved.

City of Chicago v. Stearns, 105 Ill. 554.

General for plaintiff—alighting from car—approved.

C. W. D. Ry. Co. v. Mills, 105 Ill. 63.

General for plaintiff—approved.

I. & St. L. R. R. Co. v. Estes, 96 Ill. 470.

Instruction that plaintiff may recover if injury resulted from *any* defect—bad as not confining recovery to the declaration.

Camppoint Mfg. Co. v. Ballou, 71 Ill. 417.

#### **n. General Rules as to.**

Where questions of fact are close, instruction must be accurate.

L. E. & W. R. R. Co. v. Klinkrath, 227 Ill. 439.

Each one need not contain every element necessary to recovery.

Peoria & Pekin Ry Co. v. Schantz, 226 Ill. 506.

American Car Co. v. Hill, 226 Ill. 227.

That jury should be fair to corporation approved.

Star Brewery Co. v. Hauck, 222 Ill. 348.

Directing verdict on certain facts must give all material facts to be found.

Chicago Con. T. Co. v. Schritter, 222 Ill. 364.

As to burden of proof approved.

C. U. T. Co. v. Mee, 218 Ill. 9.

Hanchett v. Haas, 219 Ill. 546.

Should be accurate in close case.

C. U. T. Co. v. O'Brien, 219 Ill. 303.

As to.

Leighton, etc. Steel Co. v. Snell, 217 Ill. 152.

As to.

The Alton Light & T. Co. v. Oller, 217 Ill. 15.

As to.

E. A. & S. T. Co. v. Wilson, 217 Ill. 47.

As to prima facie case—sudden danger—approved.

C. U. T. Co. v. Newmiller, 215 Ill. 383.

As to entering depot without authority—effect of.

C. & A. R. R. Co. v. Walker, 217 Ill. 605.

On what plaintiff must prove.

C. U. T. Co. v. Reuter, 210 Ill. 279.

That if child falsified age, no recovery—Child Labor Act—bad.

American Car & F. Co. v. Armentraut, 214 Ill. 509.

Party cannot question principle advanced in his own.

City of Ottawa v. Hayne, 214 Ill. 45.

On burden of proof.

C. U. T. Co. v. Reuter, 210 Ill. 279.

Elements to be proven by plaintiff—approved.

Ill. Terminal Ry. Co. v. Thompson, 210 Ill. 226.

As to proof of cause of explosion approved.

I. C. R. R. Co. v. Puckett, Admx., 210 Ill. 140.

As to.

I. I. & I. R. R. Co. v. Otstot, 212 Ill. 429.

As to proof required of defendant where plaintiff is shown to have been a passenger.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Should be accurate when facts are close—reversed.

Muren Coal & Ice Co. v. Howell, Admr., 204 Ill. 515.

Stating what questions involved in the case—bad.

Nelson v. Fehd, 203 Ill. 120.

Argumentative—bad.

S. C. C. Ry. Co. v. Dufresne, 200 Ill. 456.

Giving—when reversible error.

Donk Bros. Coal Co. v. Stroff, 200 Ill. 483.

Directing verdict under certain conditions good if all the conditions are stated.

Ill. Iron & M. Co. v. Weber, 196 Ill. 526.

As to what plaintiff must prove.

Armour v. Brazean, 191 Ill. 117.

Surplusage is not held prejudicial.

N. C. St. Ry. Co. v. Hutchinson, 191 Ill. 104.

Party giving cannot complain of.

C. & A. R. R. Co. v. Kelly, 182 Ill. 267.

Must be accurate where questions are close.

Swift & Co. v. Rutkowski, 182 Ill. 18.

Changing "should" to "may" in, held proper.

C. & E. R. R. Co. v. Meech, 163 Ill. 305.

Summarizing facts—what should include.

T. H. & I. R. R. Co. v. Eggman, 159 Ill. 551.

That the fact that defendant was a minor does not excuse him in assault and battery approved.

Hildreth et al. v. Hancock, 156 Ill. 618.

Should not attempt to determine a controverted fact in the case.

C. A. R. R. Co. v. Rayburn, 153 Ill. 290.

O. & M. Ry. Co. v. Wangelin, 152 Ill. 138.

That plaintiff must prove to satisfaction of jury—erroneous.

Mitchell v. Hindman, 150 Ill. 538.

To find "from the evidence" means evidence not ruled out.

Consolidated Coal Co. v. Haenin, 146 Ill. 614.

"If the jury believe from the evidence" applies to entire instruction.

C. & A. R. R. Co. v. Fisher, 141 Ill. 615.

Party cannot complain if error aids him.

C. C. Ry. Co. v. Wilcox, 138 Ill. 370.

As to "beer" "being intoxicating approved.

Kennedy Bros. v. Sullivan, 136 Ill. 94.

Should be accurate where evidence is close.

T. St. L. & K. C. R. R. Co. v. Cline, 135 Ill. 42.

Party giving cannot complain.

McNulta v. Ensich, 134 Ill. 47.

Elements of instruction approved.

*Fisher v. Jansen*, 128 Ill. 549.

Lengthy, involved, argumentative—bad.

*Coal Run Coal Co. v. Jones, Admx.*, 127 Ill. 378.

Where evidence conflicts so as to make a case either way.

*C. St. L. & P. Ry. Co. Hutchinson*, 120 Ill. 587.

Each need not embody every element.

*Village of Sheridan v. Hibbard*, 119 Ill. 307.

May be correct statement of law but harmful as applied to facts of case.

*C., R. I. & P. R. R. Co. v. Sonergan*, 118 Ill. 41.

What evidence a sufficient foundation for.

*C., R. I. & P. Ry. v. Lewis*, 109 Ill. 122.

Erroneous will not reverse if judgment correct—rule.

*C., B. & Q. R. R. Co. v. Warner*, 108 Ill. 538.

Summing up facts must embody all material elements.

*City of Chicago v. Schmidt, Admx.*, 107 Ill. 186.

Where evidence supports theories of both sides.

*City of Chicago v. Schmidt, Admx.*, 107 Ill. 186.

In case begun by injured person and continued by administratrix after his death.

*Holton v. Daly, Admx.*, 106 Ill. 131.

Requiring proof "to satisfaction of jury"—bad.

*Stratton v. Central City Horse Ry. Co.*, 95 Ill. 25.

Should be accurate when evidence is conflicting.

*Stratton v. Central City Horse Ry. Co.*, 95 Ill. 25.

Must be accurate if evidence conflicting.

*Wabash Ry. Co. v. Henks*, 91 Ill. 406.

Great accuracy in instructions required where the facts are close.

*C., W. & W. Ry. Co. v. Grable*, 88 Ill. 441.

Instruction as to prima facie case held erroneous.

*T., W. & W. Ry. Co. v. Moore*, 77 Ill. 217.

Instruction in nature of motion in arrest—held good.

Frink v. Schroyer, 18 Ill. 416.

**o. Jury—Giving Directions to—Invading Province of.**

(See also JURY.)

Instruction. When telling the jury they are judges of the facts is proper.

North Amer. Rest. & Oyster House v. McElligott, Admr., 227 Ill. 317.

Instruction warning jury against prejudice is not objectionable.

Jones & Adams Co. v. George, 227 Ill. 64.

Tending to encourage disagreement of jury—bad.

City of Evanston v. Richards, 224 Ill. 444.

As to duty of jury in finding facts—approved.

N. C. St. Ry. Co. v. Wellner, 206 Ill. 272.

As to province of jury—approved.

N. C. St. Ry. Co. v. Kaspers, 186 Ill. 246.

Calling attention to the jury's duty—bad.

Hanewacker v. Ferman, 152 Ill. 321.

When invading province of jury.

Wabash Ry. Co. v. Elliott, 98 Ill. 481.

Instruction telling jury what is better evidence, erroneous.

G., W. & W. Ry. Co. v. Brooks, 81 Ill. 245.

**o-1. On Knowledge of Danger.**

(See also KNOWLEDGE OF DANGER.)

As to knowledge and a safer way—bad.

City of Mattoon v. Faller, 217 Ill. 273.

Where servant has knowledge but acts on order—approved.

Barnett & Record Co. v. Schlapka, 208 Ill. 426.

As to knowledge—properly refused.

Cobb Chocolate Co. v. Knudson, 207 Ill. 452.

That mere knowledge of defect by plaintiff bars—bad.

Hartrich et al. v. Hawes, 202 Ill. 334.

As to knowledge of danger—approved as modified

Illinois Steel Co. v. Ryska, 200 Ill. 280.

“That if deceased knew master had not furnished scaffold and it was custom for him to do so, no recovery” held bad.

McBeath v. Rawle, 192 Ill. 626.

As to relative opportunity to know danger—bad.

City of La Salle v. Kostka, 190 Ill. 131.

As to knowledge of danger by defendant.

City of La Salle v. Kostka, 191 Ill. 131.

As to knowledge of danger by minor—approved.

Chicago Anderson Pressed Brick Co. v. Reinneiger, 140 Ill. 334.

As to passing over known defective walk—error.

City of Sandwich v. Dolan, 133 Ill. 177.

**p. Must be Based on Evidence—Must Not Ignore.**

Instruction omitting important element properly refused.

Chicago Suburban Water Co. v. Hyslop, 227 Ill. 308.

For defendant—bad as ignoring one theory of case.

Chicago City Ry. Co. Schmidt, 217 Ill. 396.

Must be based on evidence in the case.

Shickle-Harrison & H. Iron Co. v. Beck, 212 Ill. 263.

Not based on evidence—abstract.

Fehl, Admx., v. C. C. Ry. Co., 211 Ill. 279.

Must be based on evidence—not here.

Siegel, Cooper & Co. v. Norton, 209 Ill. 201.

Must be based on evidence.

Grace & Hyde Co. v. Probst, 208 Ill. 147.

Ignoring part of evidence properly refused.

Grace & Hyde Co. v. Probst, 208 Ill. 147.

Misapplying evidence—bad.

P. C. C. & St. L. Co. v. Banfile, 206 Ill. 553.

Ignoring evidence—properly refused.

C. & E. I. R. R. Co. v. Rains, Admx., 203 Ill. 417.

Must be based on evidence in the case.

N C. St. Ry. Co. v. Irwin, 202 Ill. 345.

Minimizing evidence—bad.

S. C. Ry. Co. v. Dufresne, 200 Ill. 456.

Ignoring material evidence held harmful.

Bibbins v. City of Chicago, 193 Ill. 359.

Must not ignore evidence.

C. & P. St. Ry. Co. v. Brown, 193 Ill. 274.

Must be based on evidence in the case.

City of Rock Island v. Starkey, 189 Ill. 515.

Must not omit an essential element.

Met. "L" R. R. Co. v. Skola, 183 Ill. 454.

Disregarding evidence—bad.

City of Spring Valley v. Gavin, 182 Ill. 232.

Omitting a material element will not reverse if the omitted fact is clearly proved by evidence.

I. C. R. R. Co. v. King, 179 Ill. 91.

Questions to be covered by must be involved in the case.

I. C. R. R. Co. v. Davenport, 177 Ill. 110.

Must be based on evidence.

Alton Paving B. & F. Co. v. Hudson, 176 Ill. 270.

Must be based on evidence in the case.

Washington Ice Co. v. Bradley, 171 Ill. 255.

Brink's Express Co. v. Kinnare, 168 Ill. 643.

L. N. A. & C. Ry. Co. v. Patchen, 167 Ill. 204.

M. & O. R. R. Co. v. Godfrey, 155 Ill. 78.

City of Beardstown v. Smith, 150 Ill. 169.



Must not ignore facts proved by the evidence.

I. C. R. R. Co. v. Gilbert, 157 Ill. 354.

Ignoring an element of defense harmful error.

M. & O. R. R. Co. v. Godfrey, 155 Ill. 78.

When based on evidence.

C., R. I. & P. Ry. Co. v. Clough, 134 Ill. 586.

Ignoring question of trespassing is reversible error.

C., B. & Q. R. R. Co. v. Mehlsack, 131 Ill. 61.

Must be based on evidence.

C. & A. R. R. Co. v. Adler, 129 Ill. 335.

Erroneous because not based on any evidence.

Coal Run Coal Co. v. Jones, Admx., 127 Ill. 378.

Must be based on evidence.

City of Sterling v. Merrill, 124 Ill. 522.

Ignoring material fact—bad.

L. S. & M. S. Ry. Co. v. Brown, 123 Ill. 163.

Evidence tending to prove fact justifies an instruction.

C. & W. I. R. R. Co. v. Bingenheimer, 116 Ill. 226.

When there is evidence upon which to base.

City of Chicago v. Sheehan, 113 Ill. 658.

When based on evidence.

Missouri Furnace Co. v. Abend, 107 Ill. 45.

Based on evidence if there is evidence tending to prove fact referred to.

C. W. D. Ry. Co. v. Mills, 105 Ill. 63.

Ignoring important fact harmful error.

W. St. L. & P. Ry. Co. v. Rector, 104 Ill. 296.

Outlining facts on one side only—erroneous and harmful—when.

Pennsylvania Co. v. Stoelke, Admr., 104 Ill. 201.

Giving facts on one side only—bad.

Village of Warren v. Wright, 103 Ill. 298.

Slight evidence will justify an instruction.

City of Chicago v. Scholten, 75 Ill. 469.

**q. Must do Harm, to Reverse.**

Must prejudice to justify reversal.

Harvey v. C. & A. R. R. Co., 221 Ill. 242.

Erroneous—reverse only when injurious—approved.

Illinois Steel Co. v. Ziemkowski, 220 Ill. 324.

Must be harmful as well as bad.

Rock Island S. & D. Works v. Pohlman, 210 Ill. 133.

C. W. & V. Coal Co. v. Moran, 210 Ill. 9.

Knickerbocker Ice Co. v. Benedix, 206 Ill. 362.

Chicago Hair & Bristle Co. v. Mueller, 203 Ill. 558.

Must mislead to reverse.

City of Beardstown v. Clark, 204 Ill. 524.

Metcalf Co. v. Nystedt, 203 Ill. 333.

Voigt, Admx., v. Anglo-Amer. Prov. Co., 202 Ill. 462.

Must be harmful to reverse.

S. C. C. Ry. Co. v. Dufresne, 200 Ill. 456.

Siegle v. Rush, 173 Ill. 559.

City of Roodhouse v. Christian, 158 Ill. 139.

C. & A. R. R. Co. v. Matthews, 153 Ill. 268.

East St. L. C. Ry. Co. v. O'Hara, 150 Ill. 580.

Joliet Steel Co. v. Shields, 146 Ill. 603.

C. C. Ry. Co. v. Wilcox, 138 Ill. 370.

McNulta, Receiver, v. Lockridge, 137 Ill. 270.

Joliet Steel Co. v. Shields, 134 Ill. 209.

Error in—when not harmful.

Beard et al. v. Skeldon, 113 Ill. 584.

Bad instruction will not reverse where the verdict is clearly right on the evidence.

Foster v. C. & A. R. R. Co., 84 Ill. 164.

**r. As to Negligence of Defendant.**

(See also NEGLIGENCE.)

For plaintiff—erroneous as stating facts constituting negligence.

I. C. R. R. Co. v. Johnson, 221 Ill. 42.

On negligence "at time of injury" bad—should include "before injury."

*Village of Lockport v. Licht*, 221 Ill. 35.

Stating what facts would be negligence bad.

*Alton Ry., Gas & E. Co. v. Webb*, 219 Ill. 563.

As to recovery where negligence is joint.

*Christy v. Elliott*, 216 Ill. 31.

As to defendant's negligence—approved.

*C. U. T. Co. v. Olsen*, 211 Ill. 255.

As to forcing trespasser off moving car approved.

*C. C. Ry. Co. v. O'Donnell, Admr.*, 207 Ill. 478.

Defining what facts would be negligence—bad.

*P. C. C. & St. L. Ry. Co. v. Banfile*, 206 Ill. 553.

As to defendant's negligence.

*N. C. St. Ry. Co. v. Polkey, Admr.*, 203 Ill. 225

Stating that certain facts constitute negligence—bad.

*Hartrich et al. v. Hawes*, 202 Ill. 334.

As to negligence of defendant approved.

*B. & O. R. R. Co. v. Alsop*, 176 Ill. 470.

Stating what facts constitute negligence bad.

*Pennsylvania Co. v. McCaffrey*, 173 Ill. 168.

*City of Peoria v. Garber*, 168 Ill. 318.

*N. Y. C. & St. L. Ry. Co. v. Blumenthal*, 160 Ill. 40.

Stating certain facts as constituting negligence bad.

*Pittsburg Bridge Co. v. Walker*, 170 Ill. 550.

That defendant must prove absence of negligence bad.

*C. C. Ry. Co. v. Rood*, 163 Ill. 477.

As to absence of flagman at crossing approved.

*N. Y. C. & St. L. Ry. Co. v. Luebeck*, 157 Ill. 595.

That if railroad company did all it could do to stop engine—bad where other negligence is charged.

*E. J. & E. Ry. Co. v. Raymond*, 148 Ill. 242.

As to due diligence by conductor.

N. C. St. R. R. Co. v. Cook, 145 Ill. 551.

That accident does not prove negligence approved.

Wight Fire Proofing Co. v. Poczekal, 130 Ill. 139.

Authorizing circumstantial evidence of negligence—good.

I. C. R. R. Co. v. Slater, 129 Ill. 91.

Defining negligence generally not bad as failing to confine definition to negligence averred.

C., B. & Q. R. R. Co. v. Avery, 109 Ill. 314.

Instruction as to construction of sidewalk—reversible error.

City of Chicago v. Bixby, 84 Ill. 82.

Instruction as to ringing bell at crossing—approved.

C. & A. R. R. Co. v. Elmore, 67 Ill. 176.

#### **s. On Notice to Defendant or Plaintiff.**

As to notice—of defective sidewalk—time for repairs.

City of Mattoon v. Faller, 217 Ill. 273.

As to repairs ten days before—bad as not stating where.

Village of Willmette v. Brachle, 209 Ill. 621.

As to notice—singling out facts—misleading.

Bibbins v. City of Chicago, 193 Ill. 359.

As to notice of danger—approved.

Harris v. Shebek, 151 Ill. 287.

On notice to city of defect—construed.

City of Sandwich v. Dolan, 141 Ill. 432.

As to notice of defect to city—properly refused.

City of La Salle v. Porterfield, 138 Ill. 114.

That unless defect can be readily detected city not liable is bad.

Village of Fairbury v. Rogers, 98 Ill. 554.

**t. On Ownership.**

(See also OWNERSHIP.)

Ownership of cars immaterial—operation basis of liability—approved.

*H. & St. J. R. R. Co. v. Martin*, 111 Ill. 219.

**t-1. On Relying on Orders.**

(See also ORDERS.)

That plaintiff may rely on order of foreman approved.

*Cobb Chocolate Co v. Knudson*, 207 Ill. 452.

**u. On Proximate Cause.**

As to cause of plaintiff's condition.

*C. C. Ry. Co. v. Saxby*, 213 Ill. 274.

As to proximate cause—Dram Shop Act—bad.

*Baker & Reddick v. Summers*, 201 Ill. 52.

As to proximate cause of conditions shown—proper.

*City of Rock Island v. Starkey*, 189 Ill. 515.

Stating that plaintiff must show deceased was intoxicated—dram shop case—held proper.

*Shorb v. Webber*, 188 Ill. 126.

As to intoxication as cause of death approved.

*Smith v. The People*, 141 Ill. 447.

**v. Practice as to.**

Instruction—modification of—when not error.

*Jones & Adams Co. v. George*, 227 Ill. 64.

Reading additional one after regular series has been read proper.

*Harvey v. C. & A. R. R. Co.*, 221 Ill. 242.

“If jury believe from the evidence” need not be repeated.

*C. J. Elec. Ry. Co. v. Patton*, 219 Ill. 215.

"If jury believe from evidence"—need not be repeated.

City of Mattoon v. Faller, 217 Ill. 273.

Objection to—must be urged on motion for new trial or waived.

Odin Coal Co. v. Tadlock, 216 Ill. 624.

Exception to, raises constitutionality.

Christy v. Elliott, 216 Ill. 31.

Giving form of verdict as—not error.

The Cent. Ry. Co. v. Ankiewicz, 213 Ill. 631.

Stating to jury none would be asked—disapproved.

I. I. & I. R. R. Co. v. Otstot, 212 Ill. 429.

Marking "not received"—not error.

C. U. T. Co. v. Hawthorn, 211 Ill. 367.

Limiting number of—bad practice.

The Fair v. Hofman, 209 Ill. 330.

C. U. T. Co. v. Hawthorn, 211 Ill. 367.

Limiting number of—by court—bad.

C. U. T. Co. v. Olsen, 211 Ill. 255.

When properly before supreme court.

I. C. R. R. Co. v. Puckett, Admx., 210 Ill. 140.

Read to jury then withdrawn orally—no injury.

C. & E. I. R. R. Co. v. Zapp, 209 Ill. 339.

Good as modified.

C. & E. I. R. R. Co. v. Zapp, 209 Ill. 339.

Exception to refusal of—must be saved—how.

The Fair v. Hofman, 209 Ill. 330.

Manner of court in limiting—bad.

C. C. Ry. Co. v. O'Donnell, Admr., 208 Ill. 267.

Must be submitted to court in due time.

C. C. Ry. Co. v. Handy, 208 Ill. 81.

Restricting number—must be prejudicial.

Cobb Chocolate Co. v. Knudson, 207 Ill. 452.

Limiting certain one to certain count.

Cobb Chocolate Co. v. Knudson, 207 Ill. 452.

Annotating margin after scratching out words—approved.

Cobb Chocolate Co. v. Knudson, 207 Ill. 452.

Modification—approved.

Knickerbocker Ice Co. v. Benedix, 206 Ill. 362.

Modified by court approved.

Ill. Steel Co. v. Wierzbicky, 206 Ill. 201.

Not duty of court to modify—may refuse.

Nelson v. Fehd, 203 Ill. 120.

Properly modified.

Lake St. Elevated R. R. Co. v. Shaw, 203 Ill. 39.

Telling jury none will be given for plaintiff—disapproved.

I. C. R. R. Co. v. Leiner, Admr., 202 Ill. 624.

Should be handed to judge at close of evidence.

P. C. C. & St. L. Ry. Co. v. Hewitt, 202 Ill. 28.

“If jury believe from the evidence” need not be repeated.

Slack v. Harris, 200 Ill. 96.

Restrictions as to by court how far good.

C. C. Ry. Co. v. Sandusky, 198 Ill. 400.

Error for court not to give of own motion—when.

I. C. R. R. Co. v. Atwell, 198 Ill. 130.

Must be incorporated in the bill of exceptions.

C., B. & Q. R. R. Co. v. Haselwood, 194 Ill. 69.

Marked “given” but withheld by mistake.

C. & P. St. Ry. Co. v. Brown, 193 Ill. 274.

Offering excessive number of—refusal proper.

City of Salem v. Webster, 192 Ill. 369.

Modification of by court—proper practice.

Iroquois Furnace Co. v. McCrea, 191 Ill. 340.

N. C. St. Ry. Co. v. Hutchinson, 191 Ill. 104.

I. D. & W. Ry. Co. v. Hendrian, 190 Ill. 501.

Will be accepted as they appear in bill of exceptions.

I. D. & W. Ry. Co. v. Hendrian, 190 Ill. 501.

Misreading and then giving force of.

I. D. & W. Ry. Co. v. Hendrian, 190 Ill. 501.

Instruction to find for defendant—when sufficiently set out in bill of exceptions.

Landgraf v. Kuh et al., 188 Ill. 484.

On court's own motion proper if accurately drawn.

N. C. St. Ry. Co. v. Kaspers, 186 Ill. 246.

(See also PRACTICE.)

Sent to jury after they have retired when proper.

W. C. St. Ry. Co. v. Marks, 182 Ill. 15.

Cannot be used to raise question of right of administrator to sue—special plea required.

C. & A. R. R. Co. v. Smith, 180 Ill. 453.

Oral request for, is not submitting to court.

Swift & Co. v. Fue, 167 Ill. 443.

Instructing jury after retirement—sending to jury room—bad.

City of Joliet v. Looney, 159 Ill. 471.

Must all appear in the abstract of record.

City of Roodhouse v. Christian, 158 Ill. 139.

Modification of by the court is proper practice.

C. & A. R. R. Co. v. Byrum, 153 Ill. 131.

Marking “for plaintiff” and “for defendant” disapproved.

I. C. R. R. Co. v. Larson, 152 Ill. 326.

The series must be read to the jury together as a whole.

E. St. L. Con. Ry. Co. v. Enright, 152 Ill. 246.

Instructing jury orally as to form of verdict not error.

I. C. R. R. Co. v. Wheeler, 149 Ill. 525.

When must be in writing. Statute construed.

I. C. R. R. Co. v. Wheeler, 149 Ill. 525.



Court may give on his own motion—rules.

City of Chicago v. Moore, 139 Ill. 201.

Modifying—when not error.

C. & A. R. R. Co. v. Feltsam, 123 Ill. 518.

Giving numerous—discouraged.

C. & E. R. R. Co. v. Holland, 122 Ill. 461.

General by court of own motion—applied to all—good.

C. & N. W. Ry. Co. v. Snyder, 117 Ill. 378.

By court stating why certain instruction refused—practice disapproved.

Pennsylvania Co. v. Frana, 112 Ill. 398.

Exception to one *as modified* must be saved.

C. C. Ry. Co. v. Mumford, 97 Ill. 560.

#### w. On Preponderance of Evidence.

That proof beyond reasonable doubt is not required approved.

Chicago Con. T. Co. v. Schritter, 222 Ill. 364.

As to preponderance—bad but cured by others.

The Coal Belt Elec. Ry. Co. v. Kays, 217 Ill. 340.

As to preponderance of evidence.

C. C. Ry. Co. v. Nelson, 215 Ill. 436.

C. U. T. Co. v. Reuter, 210 Ill. 279.

Ill. Terminal R. Co. v. Thompson, 210 Ill. 226.

C. C. Ry. Co. v. Bundy, 210 Ill. 39.

C. & A. R. R. Co. v. Pulliam, 208 Ill. 456.

On preponderance of evidence—bad but not injurious.

Illinois Steel Co. v. Wierzbicki, 206 Ill. 201.

That plaintiff must prove by clear preponderance—bad.

Nelson v. Fehd, 203 Ill. 120.

On preponderance of evidence.

C. & P. St. Ry. Co. v. Brown, 193 Ill. 274.

Rule as to preponderance—need not be stated in each.

Decatur C. M. Co. v. Gogerby, 180 Ill. 197.

On preponderance of evidence—held good.

W. C. St. Ry. Co. v. Scanlan, 168 Ill. 34.

Defining preponderance—approved.

Mitchell v. Hindman, 150 Ill. 538.

On preponderance—disapproved.

C., R. I. & P. Ry. Co. v. Clough, 134 Ill. 586.

As to meaning of “preponderance”—approved.

Mayers v. Smith, 121 Ill. 442.

#### **x. Repeating—Not Required.**

Need not be repeated.

City of Evanston v. Richards, 224 Ill. 444.

C. C. Ry. Co. v. Fennimore, 199 Ill. 9.

National Linseed Co. v. McBlaine, 164 Ill. 597.

W. C. St. Ry. Co. v. Dwyer, 162 Ill. 482.

Need not be repeated.

C. U. T. Co. v. Reuter, 210 Ill. 279.

Should not be repetition of others.

Mallen v. Waldowski, 203 Ill. 87.

Need not be repeated.

Met. “L” R. R. Co. v. Skola, 183 Ill. 454.

Need not be duplicated.

C., St. P. & K. C. Ry. Co. v. Ryan, 165 Ill. 89.

Need not be repeated.

Dunham Towing & W. Co. v. Dandelin, 143 Ill. 409.

Need not be repeated.

A. T. & S. F. R. R. Co. v. Feehan, 149 Ill. 202.

Need not be repeated.

City of Sterling v. Merrill, 124 Ill. 522.

Need not be repeated.

City of Bloomington v. Perdue, 99 Ill. 329.

**y. On Remarks of Attorney.**

As to relative force of instruction and statement of counsel—approved.

*Vocke v. City of Chicago*, 203 Ill. 192.

As to statements of counsel—not injurious.

*N. C. St. Ry. Co. v. Wellner*, 206 Ill. 272.

To cure improper remarks by attorney approved.

*C. & A. R. R. Co. v. McDonnell*, 194 Ill. 82.

**z. Referring to the Declaration.**

Instruction referring to declaration must correctly recite the averments set out.

*Hirsh & Sons Iron & R. Co. v. Coleman*, 227 Ill. 149.

“As charged in declaration” proper.

*C. C. Ry. Co. v. Foster*, 226 Ill. 288.

*Kirk & Co. v. Jajko*, 224 Ill. 338.

*I. C. R. R. Co. v. Jernigan*, 198 Ill. 297.

Authorizing recovery on declaration bad if declaration bad.

*Schillinger Bros. Co. v. Smith*, 225 Ill. 74.

Confining recovery to one count erroneous.

*Kirk & Co. v. Jajko*, 224 Ill. 338.

Referring to “plaintiff’s case”—not bad.

*C. C. Ry. Co. v. Nelson*, 215 Ill. 436.

“As alleged in declaration”—approved.

*U. S. Brewing Co. v. Stoltenberg, Admr.*, 211 Ill. 531.

“As charged in declaration.”

*Ill. Terminal R. Co. v. Thompson*, 210 Ill. 226.

That recovery may be under either count—approved.

*P. C. C. & St. L. R. R. Co. v. Robson*, 204 Ill. 254.

That only one count need be proved—good.

*C. & E. I. R. R. Co. v. Rains, Admx.*, 203 Ill. 417.

Referring jury to declaration—practice not approved.

P. C. C. & St. L. Ry. Co. v. Kinnare, Admr., 203 Ill. 388.

Based on declaration—bad if declaration bad.

I. C. R. R. Co. v. Eicher, Admx., 202 Ill. 556.

Reference to declaration in instruction—when not bad.

Mallott, Receiver, v. Hood, 201 Ill. 202.

Reference to declaration in—when not bad.

Baker & Reddick v. Summers, 201 Ill. 52.

“As charged in declaration” when one count dismissed—good.

City of Elgin v. Nofs, 200 Ill. 252.

Referring jury to declaration proper.

Central Ry. Co. v. Bannister, 195 Ill. 48.

Suburban Ry. Co. v. Balkwill, 195 Ill. 535.

Referring to amount of ad damnum when proper.

Central Ry. Co. v. Bannister, 195 Ill. 48.

Referring to count not proved but good—harmless.

Joliet Railroad Co. v. McPherson, 193 Ill. 629.

That recovery may be had on any count bad where one count is defective.

Joliet Railroad Co. v. McPherson, 193 Ill. 629.

“As charged in declaration” proper.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9.

St. L. A. & T. H. R. R. Co. v. Holman, 155 Ill. 21.

Referring to case as charged in declaration is proper.

N. C. St. Ry. Co. v. Hutchinson, 191 Ill. 104.

City of La Salle v. Kostka, 190 Ill. 131.

To find as charged in declaration proper.

Mt. Olive Coal Co. v. Rademacher, 190 Ill. 538.

Failing to limit recovery to declaration not reversible error when no other negligence is proven.

W. C. St. Ry. Co. v. Musa, 180 Ill. 130.

General for plaintiff—when not submitting construction of pleadings, to jury.

I. C. R. R. Co. v. Davenport, 177 Ill. 110.

Referring to case made by declaration—good.

I. C. R. R. Co. v. Cozby, 174 Ill. 109.

As to disregarding faulty count. Section 50, Practice Act.

Consolidated Coal Co. v. Scheiber, 167 Ill. 539.

As to what is surplusage in declaration.

Ill. Steel Co. v. Schymanowski, 162 Ill. 447.

Submitting case not made by the declaration when not reversible error.

W. C. St. Ry. Co. v. Martin, 154 Ill. 523.

Basing recovery on negligence not charged—bad.

C. & A. R. R. Co. v. Rayburn, 153 Ill. 290.

Central Ry. Co. v. Serfass, 153 Ill. 379.

C. & E. I. R. R. Co. v. Kneirim, 152 Ill. 458.

“As charged in the declaration” approved.

L. S. & M. S. Ry. Co. v. Hessions, 150 Ill. 547.

Calling attention to amount of ad damnum disapproved.

East St. L. C. Ry. Co. v. O'Hara, 150 Ill. 580.

“As charged in declaration” good if declaration good.

City of Aurora v. Rockabrand, 149 Ill. 399.

“All material averments of declaration” bad as submitting question of law to jury.

T., St. L. & K. C. Ry. Co. v. Balley, 145 Ill. 159.

“As charged in declaration” approved.

C., M. & St. P. Ry. Co. v. O'Sullivan, 143 Ill. 48.

“As charged in declaration” when good.

Pennsylvania Co. v. Backes, 133 Ill. 255.

“As charged in declaration” good if declaration good.

Consolidated Coal Co. v. Maehl, 130 Ill. 551.

“As charged in declaration” not required.

Tudor Iron Works v. Weber, 129 Ill. 535.

Should not go outside the case made by pleadings.

Village of Jefferson v. Chapman, 127 Ill. 439.

That recovery may be had if injury results "from acts complained of in this case" held bad.

C., R. I. & P. R. R. Co. v. Sonergan, 118 Ill. 41.

Calling attention to ad damnum not favored.

Calumet I. & S. Co. v. Martin, 115 Ill. 359.

Finding "as charged in declaration" where an ordinance is set up—approved.

Pennsylvania Co. v. Frana, 112 Ill. 398.

Not based on pleading—when misleading.

C. & A. R. R. Co. v. Robinson, 106 Ill. 142.

Must have in basis in pleadings.

E. St. L. P. & P. Co. v. Hightower, 92 Ill. 139.

### **2-1. Refusal of—Force of Rules as to.**

Instruction submitting fact to jury properly refused where it suggests defendant owed plaintiff no duty.

L. S. & M. S. Ry. Co. v. Enright, 227 Ill. 403.

Instruction may be refused if covered by others.

North Amer. Rest. & Oyster House v. McElligott, Admr., 227 Ill. 317.

On intoxication of driver of wagon properly refused—question immaterial.

Cooke Brewing Co. v. Ryan, 223 Ill. 382.

Need not be given if covered by others.

Taylor Coal Co. v. Dawes, 220 Ill. 145.

Need not be given if covered by others.

Ward v. Meredith, 220 Ill. 66.

Refusal of when proper.

C. C. Ry. Co. v. Sandusky, 198 Ill. 400.

As to custom of railroad not to stop at certain station properly refused where it appeared engineer knew passenger was getting off.

*Pennsylvania Co. v. Reidy*, 198 Ill. 9.

Refusal of proper instruction—when not reversible error.

*W. C. St. Ry. Co. v. Lieserowitz*, 197 Ill. 607.

That master is under no greater obligation to look out for servant than servant is for himself properly refused.

*Western Stone Co. v. Muscial*, 196 Ill. 382.

That no presumption arises from the fact of injury properly refused.

*W. C. St. Ry. Co. v. Petters*, 196 Ill. 298.

That if foreman used his best judgment defendant not liable properly refused.

*Ill. Steel Co. v. McFadden*, 196 Ill. 344.

May be refused if point is covered by others.

*Ill. Steel Co. v. Hanson*, 195 Ill. 106.

One covered by another is properly refused.

*E. J. & E. Ry. Co. v. Duffy*, 191 Ill. 489.

Refusing one telling jury to disregard bad count harmless if one count good.

*B. & O. S. Ry. Co. v. Keck*, 185 Ill. 400.

Refusal of proper one when not reversible.

*Met. "L" R. R. Co. v. Skola*, 183 Ill. 454.

Properly refused if covered by others.

*National E. & S. Co. v. McCorkle*, 219 Ill. 557.

Properly refused if covered by others.

*Hanchett v. Haas*, 219 Ill. 546.

Properly refused if covered by others.

*C. U. T. Co. v. Sawusch*, 218 Ill. 130.

Properly refused if covered by others.

*So. Chicago City Ry. Co. v. Kinnare, Admr.*, 216 Ill. 451.

Covered by others—properly refused.

*Christy v. Elliott*, 216 Ill. 31.

Not based on evidence—properly refused.

*Sargent Co. v. Baublis*, 215 Ill. 428.

Covered by others—properly refused.

*C. U. T. Co. v. Newmiller*, 215 Ill. 383.

For defendant—refused—“turning in front of car.”

*Chicago No. Shore St. Ry. Co. v. Strathman*, 213 Ill. 252.

Refused—as to alighting from street car.

*C. U. T. Co. v. Olsen*, 211 Ill. 255.

As to care of master properly refused.

*Rock Island S. & D. Works v. Pohlman*, 210 Ill. 133.

Properly refused if others cover.

*The Fair v. Hofman*, 209 Ill. 330.

If covered by others properly refused.

*C. C. Ry. Co. v. Handy*, 208 Ill. 81.

Properly refused if covered by others.

*P. C. C. & St. L. R. R. Co. v. Smith*, 207 Ill. 486.

Argumentative—properly refused.

*P. C. C. & St. L. Co. v. Banfile*, 206 Ill. 553.

“If defendant did all he could do”—properly refused.

*C. U. T. Co. v. Browdy*, 206 Ill. 615.

Not applicable to facts properly refused.

*Illinois Steel Co. v. Wierzbicky*, 206 Ill. 201.

Refusal not error if covered by others.

*C. U. T. Co. v. Fortier*, 205 Ill. 305.

As to reasonable of ordinance—properly refused.

*P. C. C. & St. L. R. R. Co. v. Robson*, 204 Ill. 254.

Refusing because of large number submitted—bad.

*N. C. St. Ry. Co. v. Polkey, Admr.*, 203 Ill. 225.

Refusing all offered proper if court gives others that cover the case.

*Pennsylvania Co v. Versten*, 140 Ill. 637.



Obscure—no error to refuse on that account.

N. C. St. R. R. Co. v. Williams, 140 Ill. 275.

As to promise to repair properly refused.

Weber Wagon Co. v. Kehl, 139 Ill. 644.

Assuming material fact properly refused.

C., St. L. & P. Ry. Co. v. Hutchinson, 120 Ill. 587.

Properly refused if not presented before closing argument.

I. C. R. R. Co. v. Haskins, 115 Ill. 302.

Refusal of on contributory negligence by minor—held reversible error.

C., R. I. & P. Ry. Co. v. Eininger, 114 Ill. 79.

Taking material fact from jury properly refused.

Pennsylvania Co. v. Frana, 112 Ill. 398.

Refusing good one not error if covered by others.

Village of Fairbury v. Rogers, 98 Ill. 554.

Refusal of, raises a question of law as to.

Bradley v. Sattler, Admx., 156 Ill. 603.

## **z-2. On Release of Liability.**

(See also RELEASE OF LIABILITY.)

As to release—misleading—properly refused.

Momence Stone Co. v. Turrell, 205 Ill. 515.

As to force of release signed by plaintiff—approved.

Pioneer Cooperage Co. v. Romanowicz, 186 Ill. 9.

## **z-3. On Speed of Trains.**

As to speed of railroad trains.

C. & E. I. R. R. Co. v. Crose, 214 Ill. 602.

As to what is safe speed—properly refused—when.

C. P. & St. L. Ry. Co. v. Lewis, 145 Ill. 67.

As to speed of train—no ordinance—erroneous.

Partlow v. I. C. R. R. Co., 150 Ill. 322.

As to speed of train—approved.

I. B. & W. Ry. Co. v. Hall, 106 Ill. 371.

#### **z-4. Considered Together as a Series—Both Sides**

Are considered together as a series—good cure bad.

C. & E. I. R. R. Co. v. Kimmel, 221 Ill. 547.

Harvey v. C. & A. R. R. Co., 221 Ill. 242.

Altrens Mining Co. v. Carnduff, 221 Ill. 254.

Chicago City Ry. Co. v. Shaw, 220 Ill. 532.

C. J. Elec. Ry. Co. v. Patton, 219 Ill. 215.

So. Chicago City Ry. Co. v. Kinnare, Admr., 216 Ill. 451.

C. C. Ry. Co. v. Bundy, 210 Ill. 39.

P. C. C. & St. L. R. R. Co. v. Smith, 207 Ill. 486.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

C. C. Ry. Co. v. Mead, 206 Ill. 174.

City of Macon v. Holcomb, 205 Ill. 643.

For both sides—must be considered together.

Hartrich et al. v. Hawes, 202 Ill. 334.

Erroneous—may be cured by others.

Donk Bros. Coal Co. v. Stroff, 200 Ill. 483.

Must be all considered together.

Springfield C. Ry. Co. v. Puntenny, 200 Ill. 9.

Cure each other—taken as a series.

Mt. Olive Coal Co. v. Rademacher, 190 Ill. 538.

C. C. C. & St. L. Ry. Co. v. Keenan, 190 Ill. 217.

City of La Salle v. Kostka, 190 Ill. 131.

Must be considered together as a series.

Whitney & S. Co. v. O'Rourke, 172 Ill. 177.

W. C. St. Ry. Co. v. Nash, 166 Ill. 528.

Ashley Wire Co. v. Mercier, 163 Ill. 486.

St. L. A. & T. H. R. R. Co. v. Odum, 156 Ill. 78.

C. & G. T. Ry. Co. v. Gaenowski, 155 Ill. 189.

Error in—may be cured by correct one.

C. C. C. & St. L. Ry. Co. v. Walter, 147 Ill. 60.

Bad cured by good—taken as a series

N. C. St. R. R. Co. v. Cook, 145 Ill. 551.

Error in one—may be cured by others.

T., St. L. & K. C. Ry. Co. v. Bailey, 145 Ill. 159.

Are considered as a series.

C. C. C. & St. L. Ry. Co. v. Monaghan, 140 Ill. 474.

Defect in—cured by others.

Tomle v. Hampton, 129 Ill. 381.

Error in—one cured by another.

Christian v. Irwin, 125 Ill. 619.

Bad—cured by good one.

C., B. & Q. R. R. Co. v. Warner, 123 Ill. 38.

Must be considered as a series.

C. & A. R. R. Co. v. May, Admx., 108 Ill. 288.

Bad cured by good.

C. & A. R. R. Co. v. Johnson, 116 Ill. 206.

### **Erroneous on one side cured by correct one on the other—rules.**

Bad cured by good on same subject.

C. & E. I. R. R. Co. v. White, Admr., 209 Ill. 124.

For plaintiff—erroneous—cured by good for defendant.

Economy L. & P. Co. et al. v. Hiller, 203 Ill. 518.

Bad for plaintiff—cured by good one for defendant.

C. & E. I. R. R. Co. v. Rains, Admx., 203 Ill. 417.

Good one may cure bad one.

Springfield C. Ry. Co. v. Puntenny, 200 Ill. 9.

Bad one may be cured by good one.

Consolidated Coal Co. v. Bokamp, 181 Ill. 9.

Party securing one the converse of one complained of, will not be heard to complain.

C. & A. R. R. Co. v. Harbur, 180 Ill. 394.

Party securing instruction same as one complained of cannot be heard.

*C., B. & Q. R. R. Co. v. Murowski*, 179 Ill. 77.

Misleading may be cured by others.

*I. C. R. R. Co. v. Cozby*, 174 Ill. 109.

Each instruction need not cover each count.

*C. & A. R. R. Co. v. Maroney*, 170 Ill. 521.

Erroneous may be cured by one of the series contradicting it.

*C. C. C. & St. L. Ry. Co. v. Best*, 169 Ill. 301.

Refusal of one covered by others—not error.

*City of Peoria v. Garber*, 168 Ill. 318.

Each one of series need not contain all the law in the case.

*W. C. St. Ry. Co. v. Scanlan*, 168 Ill. 34.

Party asking similar instruction cannot complain.

*I. C. R. R. Co. v. Harris*, 162 Ill. 200.

Refusal of—not error if others cover the point.

*St. L. A. & T. H. R. R. Co. v. Barrett*, 152 Ill. 163.

Bad one—cured by correct one.

*C. C. C. & St. L. Ry. Co. v. Baddeley*, 150 Ill. 328.

When correct one by defendant does not cure error in for plaintiff.

*W. St. L. & P. Ry. Co. v. Rector*, 104 Ill. 296.

### **x-5. Singling Out Evidence or Witness.**

On value of “particular evidence—approved.

*Taylor Coal Co. v. Dawes*, 220 Ill. 145.

Selecting one item of evidence—bad.

*C. C. Ry. Co. v. Lowitz*, 218 Ill. 26.

Should not single out facts of evidence.

*I. C. R. R. Co. v. Keegan*, 210 Ill. 150.

When not singling out particular fact.

*Mallen v. Waldowski*, 203 Ill. 87.

Should not single out particular facts.

*Voigt, Admx., v. Anglo-Amer. Prov. Co.*, 202 Ill. 462.

Singling out facts—bad.

*Slack v. Harris*, 200 Ill. 96.

Calling attention to one fact—misleading—when.

*W. C. St. Ry. Co. v. Petters*, 196 Ill. 298.

Giving undue prominence to certain evidence—bad.

*C. & E. I. R. R. Co. v. Filler*, 195 Ill. 9.

Should not single out facts.

*E. J. & E. Ry. Co. v. Duffy*, 191 Ill. 489.

Should not call attention to particular witnesses.

*C. C. Ry. Co. v. Mager*, 185 Ill. 836.

Must not call attention to particular witness.

*City of Dixon v. Scott*, 181 Ill. 116.

Held not to call attention to particular witness.

*C. & A. R. R. Co. v. Anderson*, 166 Ill. 572.

May call attention to plaintiff's interest in the case as affecting his credibility.

*W. C. St. Ry. Co. v. Nash*, 166 Ill. 528.

*W. C. St. Ry. Co. v. Estep*, 162 Ill. 130.

As to weight of particular evidence—bad.

*W. C. St. Ry. Co. v. Muller*, 165 Ill. 499.

Calling attention to joint liability of servant—bad.

*Pennsylvania Co. v. Keane, Admx.*, 143 Ill. 172.

Calling attention to particular evidence—bad.

*L. S. & M. S. Ry. Co. v. Hundt*, 140 Ill. 525.

Must not give undue prominence to part of the evidence.

*C., B. & Q. R. R. Co. v. Warner*, 108 Ill. 538.

Giving prominence to certain fact—bad.

*P. & P. U. Ry. Co. v. Clayberg, Admr.*, 107 Ill. 644.

Telling jury what is better evidence—bad.

*C. & A. R. R. Co. v. Robinson*, 106 Ill. 142.

**z-6. As to Sidewalks and Streets—Right of Way.**

As to right of travelers in street—approved.

W. C. St. Ry. Co. v. Schulz, 217 Ill. 322.

As to who has right of way—bad.

C. C. Ry. Co. v. Lannon, 212 Ill. 477.

As to having walked over sidewalk before—effect of—approved.

Village of Willmette v. Brachle, 209 Ill. 621.

As to proper use of street—reversible.

N. C. St. Ry. Co. v. Irwin, 202 Ill. 345.

On duty to keep streets in repair—bad but not reversible.

City of Salem v. Webster, 192 Ill. 369.

As to right of automobiles in highway—approved.

Christy v. Elliott, 216 Ill. 31.

**z-7. On Wanton and Wilful Negligence.**

Defining wanton negligence—approved.

C. C. Ry. Co. v. Jordan, Admx., 215 Ill. 390.

As to wilful negligence bad where there is no evidence of.

Sugar Creek Mining Co. v. Peterson, 177 Ill. 324.

Wrongfully defining wilful and wanton negligence.

Wabash R. R. Co. v. Speer, 156 Ill. 244.

As to wilful violation of statute approved.

Catlett v. Young, 143 Ill. 74.

**z-8. Witnesses—Competency.**

As to husband as witness for wife bad but not injurious.

N. C. St. Ry. Co. v. Wellner, 206 Ill. 272.

**z-9. On Variance.**

**As to variance—properly refused.**

**Missouri Mall. Iron Co. v. Dillon, 206 Ill. 145.**

**z-10. On Equal Means of Knowledge.**

**(See EQUAL MEANS OF KNOWLEDGE.)**

**As to “equal means of knowing” bad.**

**Barnett & Record Co. v. Schlapka, 208 Ill. 426.**

**z-11. On Incompetence of Servant.**

**As to incompetence of servant held erroneous.**

**Western Stone Co. v. Whalen, 151 Ill. 473.**

**z-12. Words and Phrases Used in.**

**In words of statute—sufficient.**

**Ward v. Meredith, 220 Ill. 66.**

**Using “defendant” for “plaintiff”—bad but cured.**

**National E. & S. Co. v. McCorkle, 219 Ill. 557.**

**As to testifying “wilfully and corruptly”—approved.**

**Hanchett v. Haas, 219 Ill. 546.**

**As to “properly” made repairs.**

**City of Mattoon v. Faller, 217 Ill. 273.**

**That sidewalk should be in “reasonably good repair”—approved.**

**City of Gibson v. Murray, 216 Ill. 589.**

**Containing word “marred” physically—error.**

**Cullen v. Higgins, 216 Ill. 78.**

**“All reasonable caution” means “reasonable caution.”**

**Wrisley Co. v. Burke, 203 Ill. 250.**

**"All reasonable care,"** criticized **"reasonable care,"** better.

City of Macon v. Holcomb, 205 Ill. 643.

**Requiring "safest" appliances on locomotive—approved.**

C. C. C. & St. L. Ry. Co. v. Hornsby, 202 Ill. 138.

**As to proximate cause in suit against joint tort feasons.**

Springfield C. Ry. Co. v. Puntenny, 200 Ill. 9.

**Following language of statute. Mine Act—good.**

Donk Bros. Coal Co. v. Peton, 192 Ill. 41.

**The word "will" used in—not necessarily mandatory.**

N. C. St. Ry. Co. v. Zeiger, 182 Ill. 9.

**"Improperly and inopportunely" in—not reversible error.**

Pennsylvania Co. v. Sloan, 125 Ill. 72.

**Explaining meaning of legal terms approved.**

Schmidt v. Sinnott, 103 Ill. 160.



**JOINT TORT FEASORS—LAW AS TO.**

Joint tort feasors—foreman giving negligent order and master, are.

Republic Iron & S. Co. v. Lee, 227 Ill. 246.

Joint tort feasors—when judgment releasing does not release the other.

Republic Iron & S. Co. v. Lee, 227 Ill. 246.

May be sued jointly or severally.

Parmalee Co. v. Wheelock, 224 Ill. 194.

Covenant not to sue one, does not release others.

C. & A. R. R. Co. v. Averill, 224 Ill. 516.

Verdict against “defendant” in joint action against, will support joint judgment.

W. C. St. Ry. Co. v. Home, 197 Ill. 250.

Gas company excavating street and contractor employed to do the work are—gas exploded—both liable.

Chicago Economic Gas Co. v. Myers, 168 Ill. 139.

Collision of street car and carette—either company may be sued, or both.

W. C. St. Ry. Co. v. Piper, 165 Ill. 325.

Former recovery against one is no bar to action against the other.

City of Roodhouse v. Christian, 158 Ill. 139.

When persons jointly negligent are not.

City of Roodhouse v. Christian, 158 Ill. 139.

City and owner of defective sidewalk—both liable.

McDanel v. Logi, 143 Ill. 487.

Release of one does not release the other.

W. C. St. Ry. Co. v. Piper, 165 Ill. 325.

May be sued severally or jointly.

Wisconsin Central Ry. Co. v. Ross, 142 Ill. 9.

St. Louis Bridge Co. v. Miller, 138 Ill. 465.

Andrews v. Boedecker, 126 Ill. 605.

W., St. L. & P. Ry. Co. v. Peyton, 106 Ill. 534.

W., St. L. & P. Ry. Co. v. Shacklet, 105 Ill. 364.

In assault and battery all parties to, are.

Mullin et al. v. Spangerberg, 113 Ill. 140.

City and private owner when they are.

City of Peoria v. Simpson, 110 Ill. 294.

Joint tort feasors—persons jointly assaulting another are—chargeable severally or jointly.

Ously v. Hardin, 23 Ill. 352.

Joint tort feasors—proof of joint ownership not required—stage coach broke down.

Frink v. Potter, 17 Ill. 406.

(See also **RELEASING LIABILITY.**)

**JURY AND JURORS.**

**Jury**—where jury find on each count instead of a general verdict, the effect is a general verdict.

*Eldorado Coal Co. v. Swan*, 227 Ill. 586.

**Challenge** “to the favor” now obsolete—method of examining jurors.

*O’Fallon C. & M. Co. v. Laquet*, 198 Ill. 125.

**Fact** that one of jury left the others and talked over ’phone to one of his employees not harmful—when.

*W. C. St. Ry. Co. v. Lundahl*, 183 Ill. 284.

**Verdict of**—cannot be impeached by or by information secured from.

*Heldmaier v. Rehor*, 188 Ill. 458.

**Taking** pleadings to jury room—proper.

*City of E. Dubuque v. Burlite*, 173 Ill. 553.

**Instructing** after retirement is proper.

*City of Joliet v. Looney*, 159 Ill. 471.

**Right to poll**—should be done when verdict is given, before separation.

*Springfield C. Ry. Co. v. Welsch*, 155 Ill. 511.

**Sending back to correct defective verdict**—proper.

*I. C. R. R. Co. v. Wheeler*, 149 Ill. 525.

**What questions are proper in examining** (56 Ill. 344; 66 Ill. 347; 73 Ill. 494, overruled).

*C. & A. R. R. Co. v. Fisher*, 141 Ill. 615.

**Separation of before verdict is returned**—bad.

*C. C. C. & St. L. Ry. Co. v. Monaghan*, 140 Ill. 474.

**Sending back after returning sealed verdict**—proper.

*Consolidated Coal Co. v. Maehl*, 130 Ill. 551.

**Remark of juror "that won't help you" not reversible.**

**C. & E. R. R. Co. v. Holland, 122 Ill. 461.**

**No peremptory challenge after panel of four accepted by both sides (97 Ill. 461, dis.). Juror may be re-examined after acceptance and excused for cause.**

**Mayers v. Smith, 121 Ill. 442.**

**Juror when not disqualified by sympathy.**

**C. & W. I. Ry. Co. v. Bingenheimer, 116 Ill. 226.**

**Requesting juror to state his idea of juror's duty—improper.**

**Pennsylvania Co. v. Rudel, 100 Ill. 603.**

**Jury may use their general knowledge and experience in connection with the evidence in the case.**

**City of Chicago v. Scholten, 75 Ill. 469.**

**KNOWLEDGE OF DEFECT AND DANGER.**

IN GENERAL—PROOF.  
PLEADINGS AS TO.  
PROMISE TO REPAIR AS AFFECTING.  
WORKING UNDER ORDERS AS AFFECTING.  
BY DEFENDANT.  
BY PLAINTIFF—SHOWN AND NOT SHOWN.  
ON DEFECTIVE SIDEWALK.  
IN PARTICULAR CASES.  
MUST BE OF DANGER.

**a. In General—Proof.**

Burden is on plaintiff to show absence of.

C. & E. I. R. R. Co. v. Heerey, 203 Ill. 492.

Common knowledge—no proof of required.

C., B. & Q. Ry. Co. v. Warner, 108 Ill. 538.

**b. Pleadings as to.**

(See also PLEADINGS.)

Of danger—is matter of defense—need not be negated by pleadings. (But see 224 Ill. 343.)

Consolidated Coal Co. v. Wombacher, 134 Ill. 64.

**c. Negated by Promise to Repair—Rule.**

(See also PROMISE TO REPAIR.)

Of defect by plaintiff is negated if defendant promised to repair the defect—when.

Odin Coal Co. v. Tadlock, 216 Ill. 624.

Is not basis for contributory negligence where there is a promise to repair—when.

Swift & Co. v. O'Neill, 187 Ill. 337.

Of danger—is negatived by promise to repair.

Chicago D. F. & F. Co. v. VanDam, 149 Ill. 337

Of danger—when a bar although promise to repair.

Chicago D. F. & F. Co. v. VanDam, 149 Ill. 337.

Anderson Pressed Brick Co. v. Subkowiak, 148 Ill. 573.

#### **d. Where Servant Works Under Orders.**

(See also ORDERS.)

Where the servant has knowledge of danger he cannot rely on the master's order to do the work in a certain way as releasing him from assuming the risk.

Republic Iron & S. Co. v. Lee, 227 Ill. 246.

By plaintiff where ordered to "go ahead" by foreman—force of—rule.

Chicago Screw Co. v. Weiss, 203 Ill. 536.

When servant is working under orders of master he does not assume risk of known danger—rule.

Western Stone Co. v. Muscial, 196 Ill. 382.

By servant will not defeat recovery if acting under orders—when.

Chicago Edison Co. v. Moren, Admx., 185 Ill. 571.

#### **e. By Defendant.**

Of defective insulation by defendant—shown.

Postal Telegraph Cable Co. v. Likes, 225 Ill. 249.

By defendant and plaintiff of unsafe conditions—shown.

McCormick H. Mch. Co. v. Zakzewski, 220 Ill. 522.

Of plaintiff's inexperience—by master—shown.

Wrisley Co. v. Burke, 203 Ill. 250.

Of danger by master—when presumed—scaffolding fell.

C. & A. R. R. Co. v. Maroney, 170 Ill. 521.

By master—necessary before duty to warn exists.

*C. R. I. & P. Ry. Co. v. Clark*, 108 Ill. 114.

By elevator owner—of a new safety device not put in—may be shown.

*Hodges v. Percival*, 132 Ill. 53.

### **f. By Plaintiff.**

#### **In general.**

Knowledge of danger by servant and continuance in the work without complaint, bars action—discussion.

*I. C. R. R. Co. v. Fitzpatrick*, 227 Ill. 478.

Experienced servant accustomed to do repairing in a dangerous way—is charged with knowledge of the danger of such method.

*Republic Iron & S. Co. v. Lee*, 227 Ill. 246.

Proof that plaintiff had none, is essential to recovery—absence of proof shown.

*Howe v. Medaris*, 183 Ill. 283.

**Notice.** Actual notice of danger not required. No recovery if plaintiff could have known of the danger by the exercise of due care.

*Jones & Adams Co. v. George*, 227 Ill. 64.

It is immaterial how knowledge of danger is acquired.

*Herdman-Harrison M. Co. v. Spehr*, 145 Ill. 329.

Of danger by servant, is never presumed.

*C. & E. I. Ry. Co. v. Hines*, 132 Ill. 162.

Of danger—risk is assumed—when.

*Stafford v. C., B. & Q. R. R. Co.*, 114 Ill. 244.

Of defect—is a question of fact for the jury.

*Ide v. Fratcher*, 194 Ill. 552.

By servant—is question of fact when there is any evidence tending to show due care—rule.

*N. C. St. Ry. Co. v. Dudgeon*, 184 Ill. 477.

Of defect—what required to make rule as to assumed risk applicable.

*L. E. & W. Ry. Co. v. Wilson, Admx.*, 189 Ill. 89.

By plaintiff—does not excuse defendant's negligence in failing to ring bell at railroad crossing.

*Elgin, J. & E. Ry. Co. v. Hoadley*, 220 Ill. 463.

**Held not shown.**

Rule as to—knowledge of danger by plaintiff—not shown.

*Sargent Co. v. Baublis*, 215 Ill. 428.

Showing held to be insufficient.

*Ill. T. R. R. Co. v. Thompson*, 210 Ill. 226.

By plaintiff of danger—not shown.

*Rock Island S. & D. Works v. Pohlman*, 210 Ill. 133.

By plaintiff of defect—not shown.

*Momence Stone Co. v. Turrell*, 205 Ill. 515.

**Held shown.**

Held shown where servant slips on greasy floor and hand is caught in unguarded cog-wheels.

*Christiansen v. Graver Tank Works*, 223 Ill. 142.

Held shown—defective street—had driven fifty times over excavation.

*Village of Lockport v. Licht*, 221 Ill. 35.

Of danger from open elevator shaft—shown.

*Browne, Admr., v. Siegel, Cooper & Co.*, 191 Ill. 226.

Of danger—when a bar to recovery.

*Simmons v. C. & T. R. R. Co.*, 110 Ill. 340.

Of latent defect—risk assumed.

*Missouri F. Co. v. Abend*, 107 Ill. 45.

**g. Of Defective Sidewalk.**

(See DEFECTIVE SIDEWALK CASES.)

Force of fact that plaintiff had been over defective sidewalk prior to injury as showing.

*Village of Willmette v. Brachle*, 209 Ill. 621.



By plaintiff that sidewalk was defective does not bar recovery per se—is an element to be considered.

*City of Streator v. Chrisman*, 182 Ill. 215.

Of defect—is not per se proof of contributory negligence—defective sidewalk.

*Village of Clayton v. Brooks*, 150 Ill. 97.

### **h. Particular Cases.**

Knowledge of a negligent method of work on the part of a fellow-servant is required to bar one injured by such negligence, from recovery.

*Hartley v. C. & A. R. R. Co.*, 197 Ill. 440.

By plaintiff of a custom as to building scaffolding—no effect.

*McBeath v. Rawle*, Admx., 192 Ill. 626.

By plaintiff—not shown where brakeman is knocked off car ladder by coal chute too near the track, though he passed the chute frequently.

*C. & A. R. R. Co. v. Stevens*, Admx., 189 Ill. 226.

Of danger from unballasted track, though open and visible, is not presumed where employe is engaged in coupling cars—his attention on his work.

*L. E. & W. R. R. Co. v. Morrissey*, 177 Ill. 376.

Engineer is not required to know when cattle guards are absent.

*T. H. & I. Ry. Co. v. Williams*, 172 Ill. 379.

By servant of the incompetence of another servant causing injury—bars recovery.

*Western Stone Co. v. Whalen*, 151 Ill. 473.

### **i. Must Be of Danger.**

Of obvious danger is presumed from knowledge of defect from which danger comes.

*E. J. & E. Ry. Co. v. Myers*, 226 Ill. 358.

Of defect and of danger—by plaintiff—shown—hole in mine roof—coal fell through striking plaintiff.

Montgomery Coal Co. v. Barringer, 218 Ill. 327.

Must be of danger, not merely of a defect.

Hartrich et al. v. Hawes, 202 Ill. 334.

Must be not only of some danger, but of the extent of the danger.

Swift & Co. v. O'Neill, 187 Ill. 337.

Must be not only of defect, but of the danger from.

Union Show Case Co. v. Blindauer, 175 Ill. 325.

Of some danger is not proof of assumed risk.

Dallemand v. Saalfeldt, 175 Ill. 310.

Must be of danger—not merely of a defect.

Consolidated Coal Co. v. Haenin, 146 Ill. 614.

**LAW—GENERAL RULES.**

Dictum in opinion—when of value as showing what is the law.

Rhoads v. C. & A. R. R. Co., 227 Ill. 328.

Of foreign state governs trial where the injury occurred in foreign state and case is commenced in Illinois.

Christiansen v. Graver Tank Works, 223 Ill. 142.

Of foreign state—how proved.

Christiansen v. Graver Tank Works, 223 Ill. 142.

Of foreign state—when should be pleaded in action commenced in Illinois.

Christiansen v. Graver Tank Works, 223 Ill. 142.

Rule that if there is "scintilla" of evidence case must go to jury is not in force in Illinois.

Offutt v. Columbia Ex., 175 Ill. 472.

Lex loci contractus governs—as to release.

I. C. R. R. Co. v. Beebe, 174 Ill. 13.

Personal injury actions are not assignable so as to prevent settlement by the person injured.

N. C. St. Ry. Co. v. Ackley, 171 Ill. 100.

As to looking and listening before crossing railroad tracks—rule.

C. & N. W. Ry. Co. v. Hansen, 166 Ill. 623.

Questions of law must be saved in the record.

City Elec. Ry. Co. v. Jones, 161 Ill. 47.

The mother is head of family on death of father.

Bradley v. Sattler, 156 Ill. 603.

A fact is a matter of law only when reasonable minds would not differ as to it.

City of Aurora v. Scott, 185 Ill. 539.

Execution cannot be levied against city. (But see statute of 1903.)

*City of Pekin v. McMahon*, 154 Ill. 141.

Speed of car may be excessive, although within schedule of road.

*Central Ry. Co. v. Allmon*, 147 Ill. 471.

Ringin bell at crossing was required at common law.

*C. & A. R. R. Co. v. Dillon*, 123 Ill. 571.

Propositions of—where case is submitted to court—rules as to.

*McIntyre v. Scholtz*, 121 Ill. 660.

Joint agent—ticket taker at entrance to St. Louis bridge held agent of bridge company and also of railroad company crossing bridge.

*Union Ry. & T. Co. v. Kallaher*, 114 Ill. 325.

As to rules for speed of train—railroad company may fix.

*I. B. & W. Ry. Co. v. Hall*, 106 Ill. 371.

Railroad company cannot avoid liability, by contract—when.

*W., St. L. & P. Ry. Co. v. Peyton*, 106 Ill. 534.

Liability for injury caused by practical joke.

*Parker v. Enslow*, 102 Ill. 272.

Respondeat superior—when applies.

*C., B. & Q. R. R. Co. v. Sykes*, 96 Ill. 162.

Res adjudicata—what is—on reversal of judgment by this court.

*C., B. & Q. Ry. Co. v. Lee*, 87 Ill. 454.

One doing an unlawful act is liable for all consequences resulting therefrom—a pile of bricks in street.

*Weick v. Lander, Admr.*, 75 Ill. 93.

Dictum of court—what in opinion is.

*I. C. R. R. Co. v. Simmons*, 38 Ill. 242.

Where negligence is partly cause; accident partly cause.

*City of Joliet v. Verley*, 35 Ill. 58.

**LESSOR AND LESSEE—LAW AS TO.**

Where injury is by a sub-lessee of defendant who leased from the owner—discussion of the law.

*Suburban Ry. Co. v. Balkwill, Admx.*, 195 Ill. 535.

*C. & G. T. R. R. Co. v. Hart*, 209 Ill. 414.

Both jointly liable—where injury is to passenger on street car of leasing company.

*W. C. St. Ry. Co. v. Home*, 197 Ill. 250.

Where a train run by lessee over lessor's tracks strikes a passenger seeking to leave the station the lessor is liable.

*C. & W. I. R. R. Co. v. Doan*, 195 Ill. 168.

Owner held liable for negligence of a sub-lessee in running into bicycle.

*Suburban Ry. Co. v. Balkwill, Admx.*, 195 Ill. 535.

When landlord is not liable for injury caused by defective sidewalk where the tenant has exclusive control of the premises.

*West Chicago Masonic Ass'n v. Cohn*, 192 Ill. 210.

Clause in lease waiving damages sustained by lessee does not apply to one not a party to the lease.

*Springer v. Ford*, 189 Ill. 430.

Lease of mine held to be but a trick—lessor held to be real operator and alleged lessee his superintendent.

*Consolidated Coal Co. v. Selinger*, 179 Ill. 370.

Landlord—when not liable to tenant for injury from defective drain.

*Jefferson v. Jameson & Morse Co.*, 165 Ill. 138.

Jointly liable where passenger is injured in collision on lessor's road.

*C. & E. I. R. R. Co. v. Meech*, 163 Ill. 305.

Both liable for injury due to negligence of lessee—when.

Pennsylvania Co. v. Ellett, 132 Ill. 654.

Pennsylvania Co. v. Sloan, 125 Ill. 72.

Lessee is liable for injury due to defective sidewalk, not lessor, except where defect existed when premises were leased.

City of Peoria v. Simpson, 110 Ill. 294.

Lessee is held to same care as lessor.

W., St. L. & P. Ry. Co. v. Peyton, 106 Ill. 534.

Lessor is liable for lessee's negligence—when.

Clark v. C., B. & Q. Ry. Co., 92 Ill. 43.

**MASTER AND SERVANT—CASES.**

**DEFECTIVE MACHINERY AND APPLIANCES.  
INSUFFICIENT HELP.  
NEGLIGENCE OF OTHER SERVANTS.  
UNSAFE PREMISES.**

**a. Defective Machinery and Appliances.**

**Defective hangers for pulley and shaft.** The hangers fell killing engineer of a steam company working there. Engine had torn out part of the hangers before the injury, and defendant had repaired it. Deceased had complained to the foreman who promised to make repairs. Judgment for plaintiff. Affirmed.

North Amer. Rest. & Oyster House v. McElligott, Admr., 227 Ill. 317.

**Rope broke on hauling tackle block.** Struck and threw plaintiff against drum of engine. Elbow dislocated, ankle sprained, rib fractured, arm permanently stiff. Judgment \$2,000. Affirmed.

Hirsh & Sons I. & R. Co. v. Coleman, 227 Ill. 149.

**Defective circular saw.** Operator lost two fingers. He knew of the defects or they were obvious to an experienced man, and he was experienced and had worked the saw many times. Had complained of broken tooth. Judgment \$3,000. Reversed on ground that plaintiff assumed the risk.

E. J. & E. Ry. Co. v. Myers, 226 Ill. 353.

**Defective derrick—fell over on structural iron worker.** Structural iron worker injured by the fall of a derrick at which he was working. Had worked sixty-five days. Derrick defective—plaintiff had no knowledge of condition of derrick.

It fell over on plaintiff, breaking a vertebrae. Question of noticing defects. Inspection. Judgment for plaintiff. Affirmed.

Grace Hyde Co. v. Sanborn, 225 Ill. 138 (12-06).

**Defective machine—operator injured.** Employe operating a slab cutting machine injured while seeking to remove cut slabs, putting his hand under the knife to remove them. The usual method was to go behind the machine but this was made inconvenient by temporary posts placed there to support the shafting. The knife fell owing to a defective spring of which plaintiff had no notice. Defendant had been notified by an employe injured two months before. Machine in use seven years. Judgment \$2,500. Affirmed.

U. S. Wind Engine & Pump Co. v. Butcher, 223 Ill. 638 (10-06).

**Defective punching machine—no guard.** Arm crushed between cog wheels of punching machine for punching rivet holes in steel plates. Plaintiff was working as helper to operator of the machine. Wheels left unguarded. Waste in plaintiff's hand caught in cogs drawing hand and arm in. Twenty-eight years of age. Had worked two weeks at job. Cog-wheels in plain view. Injury in Indiana (East Chicago). Judgment for defendant. Affirmed.

Christiansen v. William Graver Tank Works, 223 Ill. 142 (10-06).

**Defective cylinder head broke—oiler injured.** Oiler in machine shop injured by breaking of cylinder head on the engine. Foreman's attention had been called to the defect the day before—said it was all right. Judgment \$8,000. Affirmed. Full discussion as to peremptory instructions.

Libby, McNeil & Libby v. Cook, 222 Ill. 206 (6-06).

**Defective planing machine—knowledge by operator.** Experienced employe ordered to work at planing machine. Objected that machine was dangerous. Foreman adjusted it in his presence. Still objected. Foreman told him "to go to work or go home." Went to work and had three fingers cut



off. Two verdicts for the plaintiff. Two new trials. Third trial court directed verdict. Appellate court reversed, and entered judgment for \$3,000, as per stipulation of parties. Affirmed in supreme court.

*Wells A. French Co. v. Kapaozynski*, 218 Ill. 149 (12-05).

**Defective machine—servant knew of defect—attempted repairs.** Servant knew machine was defective. Asked foreman to repair it. He sent man who attempted to repair it. Servant thought machine repaired. Went to work and was injured by the defect. Judgment for the plaintiff. Affirmed.

*Odin Coal Co. v. Tadlock*, 216 Ill. 624 (10-05).

**Grindstone burst—servant's leg broken.** Servant injured by bursting of grindstone at which he was working. Leg broken. Judgment for plaintiff. Affirmed.

*Sargent Co. v. Baublis*, 215 Ill. 420 (6-05).

**Defective machine—trip-hammer fell—finger crushed.** Servant injured by fall of trip-hammer, owing to defective lock-screw. Crushed thumb and fingers. Master had notice of prior accident. Judgment \$1,500. Affirmed.

*Franke v. Hanly*, 215 Ill. 216 (4-05).

**Unguarded cog-wheels on traveling crane—helper injured.** Plaintiff had been employed as general helper. Foreman turned him over to craneman to be instructed in running crane. First day plaintiff's foot was caught in unguarded cog-wheels of crane as he attempted to descend to get oil as directed. Judgment \$1,000. Affirmed.

*Shickle, etc. v. Beck*, 212 Ill. 268 (12-05).

**Cog-wheels had worn through plank guard—fingers caught.** Minor twenty years old, had worked for defendant six or seven days at machine. Cog-wheels were covered by plank through which they had worn a hole. Slipped on slippery floor and hand came in contact with cog-wheels. Judgment for \$4,000. Affirmed.

*Rock Island S. & D. Works v. Pohlman*, 211 Ill. 133 (6-04).

**Cog-wheels left unguarded—minor injured.** Cog-wheels left uncovered caught plaintiff's fingers. He was nineteen years old. Poured chocolate in hopper. Cogs on side. Three fingers cut off. Judgment \$2,500. Affirmed.

Cobb Chocolate Co. v. Knudson, 207 Ill. 452 (2-04).

**Defective rope on spool—hand caught.** Laborer in steel mill employed to unload cars up an incline fifteen feet to a platform. Hauling up done with a rope on a spool. Rope was ragged, as foreman knew by injury to another workman some days before. Ordered plaintiff to run the rope. His hand got caught in the ragged ends and crushed. Judgment \$8,000. Affirmed.

Ill. Steel Co. v. Wierzbicky, 206 Ill. 201 (12-03).

**Hole in floor—casting fell from truck.** Laborer employed in annealing room of iron works was assisting in pushing truck loaded with heavy castings. One wheel ran into hole in floor. In lifting it out a casting fell off upon plaintiff's left arm. The foreman was directing the work. Judgment for plaintiff. Affirmed.

Missouri M. I. Co. v. Dillon, 206 Ill. 145 (12-03).

**Defective hammer—Piece broke off striking workman in eye.** Experienced blacksmith in defendant's factory was given a defective hammer to work with. Complained two days before to foreman who promised to have it fixed. Complained again day of injury. Foreman said: "Go ahead, I'll get it fixed." Chip flew from hammer destroying sight of one eye. Judgment \$6,000. Reversed and remanded in supreme court on ground plaintiff assumed the risk even though he complained and repair was promised.

Webster Mfg. Co. v. Nisbett, 205 Ill. 273 (10-03).

**Defective track and cable in stone quarry—runaway car.** Plaintiff was employed by defendant in a stone quarry. Cars were run up an inclined plane to remove stone from quarry. The hook holding the car broke letting car fall back. Plaintiff

being suddenly warned tried to escape but was caught by the car and lost a leg. Track negligently constructed—cable defective, of which defendant knew or should have known. Judgment for plaintiff. Affirmed in appellate and supreme courts.

*Momence Stone Co. v. Groves*, 197 Ill. 88 (6-02).

**Defective steam mangle—hand caught—action against receiver.** Action against receiver. Trustees under a will decreed to pay damages caused by negligence of receiver of partnership property of deceased—a hotel. Plaintiff was employed by the receiver to work in the hotel laundry. Her hand and arm were caught in a steam mangle and had to be amputated near shoulder. First suit at law was begun against receiver and trustees, then an intervening petition filed in the receivership.

*Knickerbocker v. Benes*, 195 Ill. 434 (2-02).

**Defective “bosh plate”—premature discharge of contents.** Deceased was employed by defendant as pipe fitter. Was his duty to assist in removing “bosh plate.” The foreman neglected to loosen a “bosh plate” that was to be removed. The blast forced the plate from the wall of furnace allowing flames to escape, injuring deceased so that he died. Foreman had ordered deceased to work at the “bosh plate” while the blast was on. Foreman had full charge of the work. Judgment \$5,000. Affirmed in appellate and supreme courts. Right of servant to rely on order of master.

*Ill. Steel Co. v. McFadden, Admr.*, 196 Ill. 344 (4-02).

**Defective brace broke—foreman’s direction—workman fell.** Defendant was a building contractor doing work on postoffice building. Deceased was employed by him and was seeking to set a brace. Foreman came up to assist him and while trying to remedy the situation caused the support on which deceased sat, to fall, precipitating deceased to ground. Judgment \$2,500. Affirmed.

*Wolf v. Collins, Admr.*, 196 Ill. 281 (4-02).

**Defective steam hoist—bolt from bucket fell striking workman.** Employe loading iron ore from ship. Buckets were low-

ered into hold of ship, filled and raised out again, by steam hoist. A bolt on the bucket broke owing to defect in it, and fell striking plaintiff's right hand. He died during suit. Administratrix substituted. Judgment \$1,000. Affirmed.

*Ill. Steel Co. v. Ostrowsky, Admx., 194 Ill. 376 (2-02).*

**Defective emery wheel burst—no guards.** Emery wheel in machine shop, not in use, running at high speed broke. A piece struck deceased. Wheel defective—no guards. Judgment \$2,500. Affirmed.

*Ide et al. v. Fratcher, 194 Ill. 552 (2-02).*

**Defective belting—arm caught.** Employee in foundry whose duty it was to operate a "rattle-box" was injured by being caught in a belt which had been repaired by foreman, who assured plaintiff it was all right. Arm torn off. Plaintiff complained of danger. Judgment \$7,000. Affirmed.

*Gundlach et al. v. Schatt, 192 Ill. 509 (10-01).*

**Defective machine—helper hand caught.** Employee's hand caught in a "body make" in tin can factory. Little finger cut off. He was assisting foreman who operated machine and directed him what to do. Judgment \$1,000. Affirmed.

*Norton Bros. v. Nadebak, 190 Ill. 595 (6-01).*

**Defective hoisting apparatus—rope slipped.** Employee was "riding" on an iron beam being lifted by a steam derrick. Owing to defect in machinery of which defendant knew, rope slipped and beam fell throwing plaintiff to ground. Judgment \$10,000. Affirmed.

*Union Bridge Co. et al. v. Teehan, 190 Ill. 374 (4-01).*

**Defective rope—arm crushed.** Bookkeeper was acting as superintendent, moving car with iron drum and rope device. Rope worn and ragged caught his arm which was dragged into drum and crushed—amputation. Judgment for plaintiff. Affirmed.

*Decatur Cereal Mill Co. v. Gogerty, 190 Ill. 197 (6-99).*

**Defective barrel making machine—hand crushed.** Defective barrel making machine caught and crushed plaintiff's hand. Had been out of repair for years, so known by defendant who had repeatedly tried to repair it. Failure to warn. Plaintiff signed release, but could not read English. Judgment \$3,000. Affirmed.

*Pioneer Cooperage Co. v. Romanowicz*, 186 Ill. 9 (6-00).

**Defective cogwheels—knife of cutting machine fell—notice.** Employee injured by fall of knife of an automatic cutting machine. The cogs and wheels were defective—the jar caused knife to fall of itself. Plaintiff noticed a clicking and looseness in the cogs but made no complaint. Judgment for plaintiff. Reversed in supreme court on ground of assumed risk.

*Howe v. Medaris*, 183 Ill. 288 (12-99).

**Defective hay cutter—hand crushed.** Both foreman and plaintiff knew of the defect in the machine. The foreman had promised to repair the defect but did not. Judgment \$1,800. Affirmed. Evidence—slight preponderance sustains verdict. Witness interest of, considered. Instruction on due care approved.

*Donley v. Dougherty*, 174 Ill. 582.

**Defective emery wheel burst.** Emery wheel burst—killed grinder. Was too large for the mandrel. Superintendent had tried to fix it up—new wheel. Judgment for plaintiff. Affirmed.

*Missouri Malleable Iron Co. v. Hoover, Admx.*, 179 Ill. 107 (4-99).

**Defective cooling fans.** Arm of oiler caught—guards misplaced. Judgment \$3,500.00. Affirmed.

*Swift & Co. v. Fue*, 167 Ill. 443.

**Defective cement roof—workman fell through.** Building being constructed. Action against contractor. Judgment \$5,000. Affirmed.

*Probt Con. Co. v. Foley*, 166 Ill. 31.

**Broken drain pipe** injured tenant's property. Repairs by contractor. Judgment \$591. Reversed—no cause of action against owner.

Jefferson v. Jameson & Morse Co., 165 Ill. 138.

**Defective oil can—spout too short.** Hand caught. Promise to repair. Linseed oil machinery. Judgment \$2,500. Affirmed.

National Linseed Oil Co. v. McBlaine, 164 Ill. 597.

**Unguarded cogwheels—workman slipped and caught arm.** Right arm cut off. Judgment \$2,600. Affirmed.

Taylor v. Felsing, 164 Ill. 381.

**Defectively fastened wringing machine.** Workman was assisting in placing a belt on machine. The machine was jerked from its place owing to improper fastening. The belt caught deceased. Action against manufacturer who set up the machine. Judgment \$5,000. Affirmed.

Empire Laundry Co. v. Brady, 164 Ill. 59.

**Defective crane fell over upon plaintiff.** Fastening rod gave way. The defect was known to the superintendent. Judgment \$7,000. Affirmed.

Ashley Wire Co. v. Mercier, 163 Ill. 486.

**Lumber slipped out of hoisting apparatus.** Struck workman below. Killed. Broken tooth in cogwheel proximate cause. Judgment \$5,000. Affirmed.

Swift & Co. v. Foster, 163 Ill. 51.

**Unguarded cogwheel.** Child eleven years old lost fingers of his right hand. Judgment \$1,700. Affirmed.

Norton v. Volzke, 158 Ill. 403.

**Projecting pin on shaft** caught clothing of boy twelve years old employed by defendant and whirled him around shaft. Died. Had been warned as to the machinery but not of the

pin. Suit by mother and two brothers, twenty-five and twenty-one years old. Judgment \$5,000. Affirmed.

Bradley v. Sattler, Admx., 156 Ill. 603.

**Defective hoisting bucket.** Contents fell upon workman in hold of ship. Bolt broke. Judgment \$5,000. Affirmed.

Penna. Coal Co. v. Kelly, 156 Ill. 9.

**Defective machinery.** Drop hammer operated by treadle. The "dog" slipped and the hammer came down on plaintiff's hand, requiring amputation. Had fallen before and foreman told plaintiff to keep at work and he would bring him a pair of tongs. Boy 15 years old. Judgment for plaintiff. Affirmed.

Chicago Drop Forge & F. Co. v. VanDam, 149 Ill. 337.

**Defective nut in clay-mixing machine.** Eye bolt came out of lever and the machinery was thrown into gear, and started while plaintiff was in the pan shovelling out mixed clay. The wheels caught and injured him. The foreman knew the nut was loose, and a regular repairer was employed to inspect. Judgment \$3,000. Affirmed.

Monmouth M. & M Co. v. Erling, 148 Ill. 521.

**Defective valve supplying oil to brick kiln.** Oil caught fire. Could not be shut off from tank owing to defective valve. Plaintiff disconnected feed pipe on assurance of another workman that valve to oil tank was off. Oil saturated plaintiff's clothing which caught fire and he was severely burned. Facts complicated. Judgment \$4,000. Affirmed.

Pullman Palace Car Co. v. Laack, 143 Ill. 243.

**Defective brake on tram car in stone quarry.** Workman thrown off the car while trying to set the brake in the line of his duty. Fingers of one hand crushed; also a foot.

Motion to direct verdict given. Affirmed on the ground that plaintiff failed to prove any defect in the appliances furnished him.

Sack v. Dolese et al., 137 Ill. 129.

**Defective machine.** Coupling on shafting weak and unsafe. Oiler's clothing caught in the coupling. Inexperienced. No warning as to the dangerous condition of shafting. Judgment \$2,000. Affirmed.

Tudor Iron Works v. Weber, 129 Ill. 535.

**Buzz saw allowed to run unguarded in dark place at night.** Plaintiff was gathering loose papers and ran his hand against the buzz saw. One finger cut off. Judgment for plaintiff. Affirmed.

Willard v. Swanson, 126 Ill. 381.

**Defective derrick.** Lumber being raised by plaintiff fell upon him, breaking his arm. Permanent injury. "False Joint." Judgment \$3,500. Affirmed.

Pullman Palace Car Co v. Bluhm, 109 Ill. 20.

**Defective machinery.** Workman injured in blast furnace. Foot injured. Defective clamp. Judgment \$4,000. Affirmed.

N. C. Rolling Mill Co. v. Monka, 107 Ill. 340.

**Defective emery wheel burst injuring employe using it.** He began action but died before final judgment. Administratrix substituted. Judgment for plaintiff. Reversed on ground case was tried on wrong theory and instruction misstated the law.

Holton v. Daly, Admx., 106 Ill. 131.

**Defective machinery**—blow off pipe on stationary engine defectively constructed; blew off while fireman was blowing off steam, striking him in shoulder, breaking shoulder bone. Judgment \$1,000. Reversed on ground that notice of the defect by defendant was not shown and the instruction omitted element of notice.

E. St. L. P. & P. Co. v. Hightower, 92 Ill. 139.

**Defective machinery**—explosion of boiler of locomotive. Part of boiler sheet gave way—fireman killed. The defect was



hidden and experts testified could not have been discovered by inspection, which had been regular and sufficient. Judgment \$1,950. Reversed on ground no cause of action shown—no omission of duty by defendant.

I B. & W. R. R. Co. v. Toy, Admr., 91 Ill. 474.

**Minor—boy injured in planing mill.** Thoughtlessly put his hand on saw. Fingers cut off. Thirteen years old. Judgment \$1,300. Reversed because of an instruction failing to call attention to due care.

Sinclair v. Berndt, 87 Ill. 174.

**Unguarded shafting—servant passing shafting in performance of her duty—shafting caught clothing—drawing her around shafting and causing her death.** End of shafting was too long and extended out. Had not been cut off owing to pressure of business. Judgment for plaintiff. Affirmed.

Fairbank v. Haentzsch, 73 Ill. 236.

**Defective emery wheel broke—operator killed—improper construction.** Judgment for plaintiff. Reversed because of instruction ignoring due care by the plaintiff.

Camppoint Mfg. Co. v. Balbu, 71 Ill. 417.

#### **b. Insufficient Help Furnished.**

**Unloading casks from car.** Slid down skids to the ground. Working under immediate orders of the foreman. Cask in car fell over on plaintiff while workmen were seeking to place it on the skid. Insufficient help to hold the cask. Judgment \$3,000. Affirmed.

Kirk & Co. v. Jajko, 224 Ill. 328.

**Timber fell on workman—insufficient help—building bridge.** Gang boss employed by defendant in building a bridge had charge of excavating. Plaintiff was ordered to assist in moving heavy timber. Had no experience. The timber slipped and be-

cause of insufficient help to handle it fell, striking plaintiff and knocking him off bridge to ice on the river below. Judgment \$1,500. Reversed in appellate court without remanding. Supreme court reversed appellate court and remanded same. Reversing 80 Ills. appellate—437.

Supple v. Agnew et al., 191 Ill. 439 (10-01).

**Boy in packing house hit by carcass—insufficient help.** Plaintiff, a minor, was employed in packing house. The work required three or four boys. Plaintiff was left to work alone. He fell behind in his work and work accumulated. While attentive on his work he was struck in the back by a carcass of beef and knocked forward. The knife in his right hand struck and cut his left arm. Proximate cause insufficient help. Judgment \$2,200. Affirmed. Exhibiting injured limb discretionary.

Swift & Co. v. Rutkowski, 182 Ill. 18 (10-99).

**Tank fell downstairs—being lowered.** Employee assisting in lowering tank. Arm lost. Tank slipped and fell upon plaintiff. Judgment \$3,000. Reversed.

Karr Supply Co. v. Kroenig, 167 Ill. 560.

### c. Injury Due to Negligence of Servants.

**Building being torn down.** Gang sawed wrong support off. Timber fell on boy working below—not one of the gang. Legs broken; skull fractured. Judgment \$1,999. Affirmed.

American Car Co. v. Hill, 226 Ill. 227.

**Board across elevator shaft slipped** while workman was crossing on it throwing him to the bottom of the shaft. The planks had been placed by plaintiff. While he was absent other servants moved the plank so that one end was unsupported. Judgment \$5,000. Affirmed.

The Variety Mfg. Co. v. Landaker, Admx., 227 Ill. 21.

**Loading rails onto car—rail slipped—negligence of foreman.** Laborer was assisting in loading iron rails on flat cars using

two rails extending from ground to car to slide them up on. Foreman placed a stake on the car in such a way that a rail slid up, struck the stake and then slid down again striking plaintiff crushing his ankles. Judgment \$2,500. Affirmed. Risk not assumed when—foreman's negligence.

C, R. I. & P. Ry. Co. v. Rathneau, 225 Ill. 278 (2-07).

**Workman being lowered into chimney—swing tipped.** Minor who was assistant to riveter, in building steel chimneys, was injured while being lowered into the chimney in a swing. He had no experience in that work. Foreman directed him and held the rope. The swing tipped throwing him out and down. Judgment for plaintiff. Affirmed.

Springfield Boiler Mfg. Co. v. Parks, 222 Ill. 355 (10-06).

**Failure to give notice of "blowing a heat."** Workman in steel mill injured by molten metal flying into his face. Customary to blow a whistle before "blowing a heat." This was not done—no warning. Destroyed one eye. Judgment for plaintiff. Affirmed.

Ill. Steel Co. v. Ziemkowski, 220 Ill. 324 (2-06).

**Spike broke—piece struck workman in eye—foreman's order.** Section hand was removing wreck from track under direct orders of foreman. Plaintiff held "claw bar while a co-worker used hammer to drive its edge under spike head." Piece of the spike flew off striking plaintiff in the eye. Foreman had ordered work done in that way. Judgment \$3,500. Affirmed.

I. C. R. R. Co. v. Sporleder, 199 Ill. 184 (10-02).

**Traveling crane ran over workman's arm.** Carpenter employed by defendant was directed to build a partition in the middle of large room, in which defendant operated two departments of his business. While plaintiff was working, the room smoky and poorly lighted, the crane which he did not know was running, came down without notice and crushed his arm. Judgment \$1,089. Affirmed.

National E. & S. Co. v. McCorkle, 219 Ill. 557 (2-06).

**Traveling crane ran into workman.** Molder's helper was ordered to climb a jib-crane to adjust rollers slipped off the track. While on the crane, a travelling crane ran against him injuring his back and hand. Four trials. Judgment \$1,999. Affirmed.

Leighton, etc., *Steel Co. v. Snell*, 217 Ill. 152 (10-05.)

**Negligence of foreman—turned on machinery injuring servant.** Brewer employed by defendant in a brewery. Vat six feet in diameter and seven feet high. Top covered, with door in cover. Shaft ran into vat to turn iron arms placed inside to stir contents. Plaintiff got into vat without disconnecting power. While in vat the foreman started the machinery not knowing plaintiff was in vat. Judgment \$1,000. Reversed and remanded.

Baier v. Selke, 211 Ill. 512 (10-04).

**Negligence of conductor of train—car overhanging main line.** Stockman left loaded car projecting over main track. Station agent notified dispatcher by telegraph. Dispatcher notified conductor of on-coming train. Conductor failed to notify engineer or fireman. Fireman killed in collision resulting. Judgment for defendant directed. Reversed and remanded—master cannot delegate duty to warn.

Rogers, Admx., v. C. C. C. & St. L. Ry. Co., 211 Ill. 126 (10-04).

**Defective packing in open hearth furnace—"tapper" burned.** Plaintiff was employed to clean out "packing" in tapping hole of open hearth furnace. Packing three feet thick. Had removed only three or four inches when hot metal burst through striking plaintiff. Careless packing by another employe—the "packer." "Tapper" and "packer" held fellow-servants. Judgment \$3,000. Reversed on ground of fellow-servantship as matter of law.

Ill. *Steel Co. v. Coffey*, 205 Ill. 206 (10-03).

**Steam shovel rope struck workman—failure to warn.** Plaintiff was assisting in unloading of grain from cars. Shovels

run by steam were used; ropes connecting with engine. Warning was usually given of starting of shovel. On this occasion no warning was given and plaintiff was caught in the rope and thrown against a post and shafting. Leg broken—amputated. Judgment \$15,000. Affirmed.

C. & G. T. Ry. Co. v. Spurney, 197 Ill. 471 (6-02).

**Section men removed rail—engine derailed—failure to warn.** Engineer killed. Section men removed a rail. No warning to approaching train, which was derailed and engineer killed. Judgment \$5,000. Affirmed.

C. & A. R. R. Co. v. Eaton, Admx., 194 Ill. 441 (2-02).

**Circular saw—negligence of helper—operator's fingers cut.** Employe and helper were running timber through a circular saw. Owing to improper handling of the timber by the helper, plaintiff's fingers of right hand were cut off. Judgment \$5,000. Affirmed in appellate. Reversed and remanded in supreme court. Held—helper was fellow-servant of plaintiff.

Pagels v. Meyer, 193 Ill. 172 (12-01).

**Incompetent servant.** Changed gear of hoisting crane in wrong way. Crank flew back striking plaintiff. Judgment \$3,500. Affirmed.

Fraser & Chalmers v. Schroeder, 163 Ill. 459.

**Unloading lumber from car.** Workman killed. Negligence of foreman. Judgment \$2,000. Affirmed.

Hughes v. Richter, Admr., 161 Ill. 409.

**Foot crushed by ladle car in steel mill.** Plaintiff was turning up ladles." He put his foot on the rail in front of the ladle wheel. An engine in coupling on to the ladle pushed it ahead, crushing plaintiff's foot. The usual method was to stand away from the ladle while turning it up. Contributory negligence as matter of law. Judgment for defendant. Affirmed.

Werk v. Ill. Steel Co., 154 Ill. 427.

**Incompetent servant in charge of a boat towing two other boats.** Employee on one boat was caught by the tow line owing to high speed. Leg amputated below the knee. Judgment for plaintiff. Affirmed.

Western Stone Co. v. Whalen, 151 Ill. 473.

**d. As to Safe Place to Work.**

**Concrete slab on roof broke under weight of employee.** He fell through and was killed. Judgment for plaintiff. Affirmed.

Grace Co. v. Larson, 227 Ill. 101.

**Repairing large belt.** Plaintiff climbed upon an angle iron to reach the belt which was on a revolving shaft. Left hand was caught between belt and revolving shaft, and torn off. This method of work had been ordered by the foreman. Plaintiff had done the same work several times before. Judgment \$10,000. Reversed and remanded because of variance in the proof and averment as to knowledge of the danger.

Republic Iron & S. Co. v. Lee, 227 Ill. 246.

**Obstructions on track in an iron foundry.** Plaintiff was pushing a ladle containing hot metal when he stumbled over an obstruction and fell into the molten iron severely burning him. Plaintiff had been ordered by foreman to carry the molten iron while it was yet dark. It does not appear how the obstruction came on the track. Judgment \$5,000. Affirmed.

Deering v. Barzak, 227 Ill. 71.

**Safe place to work.** Workman digging trench next to an old wall, for the foundation of new building. The excavating caused the old wall to fall upon workman. Judgment \$2,000. Affirmed.

Grace & Hyde Co. v. Strong, 224 Ill. 630.

**Defectively piled lumber pile fell over.** Workman removing lumber pile which had been defectively piled. Plaintiff ex-

perienced. Situation open and obvious. Pile fell over and injured him. Judgment \$1,350. Affirmed in appellate; reversed and remanded in suprême.

McCormick Harvester Co. v Zakzewski, 220 Ill. 522.

**Cattle guard struck legs—sitting on flat car.** Employee riding on flat-car. Legs hanging over side, struck cattle guard and knocked him off. Judgment for plaintiff. Reversed and remanded in supreme court.

Chicago T. T. Co. v. Schiavone, 216 Ill. 275 (6-05).

**Post too near track—Brakesman knocked off ladder.** Brakesman injured. Knocked off the car ladder by a post placed too near the track. Construction necessary under the conditions. No warning to plaintiff. Judgment \$1,500. Affirmed.

M. & O. Ry. Co. v. Vallowe, 214 Ill. 124 (2-05).

**Piece of iron ore fell from pile—struck servant.** Master allowed steep pile of iron ore to remain in yard. Ordered plaintiff to remove ore from pile. Large lump of ore fell striking plaintiff. Judgment for plaintiff. Affirmed.

Ill. Steel Co. v. Olste, 214 Ill. 181.

**Iron column fell over—defective support.** Structural iron worker employed by defendant on a school house was struck by an iron column that suddenly fell on him without warning. Column was improperly supported. Judgment for plaintiff. Affirmed.

Hansell-Elcock F. Co. v. Clark, 214 Ill. 399.

**Set-screw on shaft caught clothing—Child Labor Act.** Child of fourteen years employed by defendant to work machine. Set screw caught his arm, twisted and broke it. Violation of Child Labor Act, 1903. Foreman had shown plaintiff how to operate machine. Judgment \$1,800. Affirmed.

American Car Foundry Co. v. Armentraut, 214 Ill. 509 (4-05).

**Hauling line of pile-driver broke.** Plaintiff was ordered to go upon the pile-driver and get a pair of sheave blocks. While

he was on the pile-driver, the line holding it, broke, owing to absence of supporting lines. The pile-driver fell over, throwing plaintiff into the river. Had worked on pile-drivers before, but had no knowledge of this one. The absence of supporting lines was open and obvious. Judgment \$20,000. Reversed and remanded because evidence did not tend to show exercise of due care.

I. C. R. R. Co. v. Swift, 213 Ill. 307.

**Iron rod fell and struck employe.** Bricklayer employed by defendant in constructing a gas-tank. A bridge ran over the place where plaintiff worked. Wagons came here and unloaded. An iron rod used to hold the wagon wheels fell out and struck plaintiff, breaking leg. Judgment for plaintiff (three trials). Affirmed.

Hinchliff v. Rudnik, 212 Ill. 569 (12-04).

**Pole too near track—brakeman knocked off ladder.** Telegraph pole had for years stood too near track, ten to fourteen inches away. Brakeman not knowing about the pole was knocked off car ladder while passing. Judgment \$6,000. Affirmed.

Ill. Terminal R. R. Co. v. Thompson, 211 Ill. 226 (6-04).

**Unfastened support ropes of pile-driver—leads fell.** Deceased was lowering the leads of a pile-driver used in building railroad bridge. Defendant failed to fasten support ropes. The leads fell upon and killed workman who was inexperienced and was working under orders of foreman. Judgment \$5,000. Affirmed.

Ill. Southern Ry. Co. v. Marshall, Admr., 210 Ill. 562 (6-04).

**Brick fell down freight elevator shaft—hit deceased—employe.** Mason working on a nine story building. Brick fell down the "hoist" elevator striking deceased on the head. Caused by carelessness of employe on upper floor. Judgment \$2,500. Reversed and remanded with directions.

Wells v. O'Hare, Admr., 209 Ill. 627 (6-04).



**Switch stand too near track—switchman stumbled over it.** Extra switchman of five years' service injured by stumbling over a switch stand placed too near the track. He was walking beside car trying to make a coupling. Sixteen inches between car and stand. Did not have occasion to note position of stand. Leg amputated below knee. Judgment \$10,000. Affirmed.

C. & A. R. R. Co. v. Howell, 208 Ill. 155 (2-04).

**Wall fell in on workman—foreman directed the work.** Laborer working under the immediate orders of foreman was assisting in tearing down the roof of a building partially destroyed by fire. Wall fell in and struck plaintiff. Held foreman's negligence in working men next to a dangerous wall. Judgment \$2,000. Affirmed.

Pressed Steel Co. v. Herath, Admr., 207 Ill. 576 (2-04).

**Swinging boom—workman knocked off bridge.** Member of bridge gang constructing bridge was knocked off the bridge, by being struck by a swinging boom run by stationery engine. Judgment \$7,000. Reversed and remanded for failure to admit.

I. C. R. R. Co. v. Wade, 206 Ill. 523 (12-03).

**Unguarded platform—workman fell off—assumed risk.** Plaintiff was employed tearing out a battery of boilers. Had to pass over a platform, or walk, carrying boiler plate. Fell off the platform while crossing. Held—danger incident to the employment. Judgment \$3,500. Reversed without remanding in appellate; affirmed in supreme.

Davis v Chicago Edison Co., 195 Ill. 31 (2-02).

**Foreman fell off dump pile in night-time—no notice.** Night foreman fell off the side of a dump pile he was inspecting in the dark, no lantern being obtainable. Material had been removed during the day leaving a perpendicular wall on one side. Plaintiff had not been warned as to this. Leg broken. Judgment \$5,000. Affirmed.

Iroquois Furnace Co. v. McCrea, 191 Ill. 340 (6-10).

**Defective floor in steel mill—request for repair.** Plaintiff injured because of defective floor in steel mill. Failure to provide safe place. Requested foreman to fix the floor and he had promised to do so but did not. Judgment for plaintiff. Affirmed.

Ill. Steel Co. v. Mann, 197 Il. 186 (6-02).

**Wheelbarrow of brick tipped on elevator—fell on workman below.** Laborer employed by contractors who were renovating a building eight stories high, was ordered to repair a double elevator. Was inexperienced. Another employe placed barrow of bricks in one side of elevator. When elevator was started barrow tipped, throwing bricks on plaintiff. Judgment \$4,800. Affirmed.

Wells et al. v. Bondages, 193 Il. 328 (12-01).

**Poorly propped machine fell on passing workman.** Laborer employed by defendant was moving heavy press to car. Foreman ordered it left on platform. It was left poorly propped and fell over on to plaintiff as he was passing. Judgment for plaintiff. Affirmed.

Goss Printing Co. v. Lempke, 191 Ill. (6-01).

**Cinder pile near track—switchman slipped on.** Switchman's foot slipped under wheel owing to cinder pile near track on which foot slipped. Was seeking to couple cars. Conflict as to cinder pile. Judgment for plaintiff. Affirmed.

C. R. I. & P. Ry. Co. v. Rathburn, 190 Ill. 572 (6-01).

**Coal chute too near track—brakeman knocked off.** Brakeman knocked off the ladder of car by striking a coal chute built too near the track. Failure to warn. Judgment \$2,471. Affirmed.

C. & A. R. R. Co. v. Stevens, Admx., 189 Ill. 226 (2-01).

**Insufficient light—workman knocked off truck—stock yards.** Plaintiff stood on truck on trainway in defendants' stock yard to adjust an electric light. Had complained of insufficient

light. Defendant had promised to repair the lights. Another truck was pushed against one plaintiff stood on knocking him down. Judgment \$5,000. Affirmed.

Swift & Co. v. O'Neill, 187 Ill. 337 (10-00).

**Fall of corbel stone—workman repairing.** Workman injured by the fall of a corbel stone which he was repairing, under projection of a series of bay windows. Had cracked in one or more places and one piece had fallen out before plaintiff began work. Failure to properly support the stone. Danger not obvious. Judgment \$1,000. Affirmed.

Watson Stone Co v. Small, 181 Ill. 266 (10-99).

**Defective rollers on door—fell over on workman.** Servant assisting in opening an iron door in a foundry injured by fall of the door—defective rollers—1. What is identical cause of action? Judgment for plaintiff. Affirmed.

Griffin Wheel Co. v. Markus, 180 Ill. 391 (6-99).

**Tile fell off hoisting "boat" killing workman below.** "Boat" was being unloaded at top of high building. Judgment \$5,000. Affirmed. 1. Independent contractor—who are master and servant (69 Ill. App. 659, affirmed).

Pioneer Fireproof Co. v. Hanson, 179 Ill. 100 (12-98).

**Cornice fell—failure to furnish anchors.** Contractor erecting four story building. They sub-contracted the terra cotta work to defendant who employed deceased. Original contractor was to furnish anchors—failed to do so. Urged men to go to work without anchors. They did so. Cornice fell for want of anchors, killing deceased. Judgment for plaintiff—reversed in appellate court without remanding. Affirmed by supreme court on ground defendant was guilty of no negligence and deceased assumed the risk.

Homersky, Admx., v. Winkle Terra Cotta Co., 178 Ill. 562 (2-99).

**Failure to provide "butt post"—switchman injured.** Car ran off track—in pulling it on it fell over upon switchman. Judg-

ment \$5,000. Reversed. 1. Switching crews held fellow-servants. 2. Evidence of what other roads did—erroneous (70 Ill. App. 91—reversed).

C. & E. I. R. R. Co. v. Driscoll, Admx., 176 Ill. 330.

**Clay bank caved in.** Oiler on steam shovel engine crushed. Judgment \$7,500. Affirmed. 1. Per instruction asked with series ineffectual. 2. Master's own negligence not assumed. 3. Instruction must be based on evidence (74 Ill. App. —, affirmed).

Alton Paving B. & F. Co. v. Hudson, 176 Ill. 270 (12-98).

**Hoisting apparatus caught on window shutter which fell.** Workman killed by fall of window shutter torn off by rope of hoisting apparatus used in hoisting material to top of building. Work done by independent contractor. Deceased not his employee. Judgment \$1,200. Affirmed.

Lennard v. Kinmore, 174 Ill. 532.

**Unloading barrels from wagon—one fell.** Plaintiff and foreman were lowering barrels out of back end of wagon. One slipped from their hands striking plaintiff's leg. Judgment for plaintiff. Reversed in appellate court. Reversal affirmed in supreme court. 1. When foreman is fellow-servant. 2. Per instruction not necessary to permit review of facts by appellate court.

Gale v. Beckstein, 173 Ill. 187.

**Building under construction—plank fell striking workman** employed by the defendant who was an independent contractor. Plaintiff was employed outside the building hoisting lime to the upper floors, when the plank from one of the floors above fell. Judgment \$3,000. Affirmed.

Whitney and S. Co. v. O'Rourke, 172 Ill. 177 (68 Ill. Appt. 487 affd).

**Iron beam swung around and struck workman.** Defendant was building a bridge. His foreman failed to furnish a tag line to iron beams while moving them. Plaintiff tried to steady

same with his hands. It swung around and struck him. Judgment \$3,000. Affirmed. Where foreman acts as co-laborer master is liable for his neglect.

Pittsburg Bridge Co. v. Walker, 170 Ill. (70 Ill. App. 55 *affd.*).

**Scaffolding fell throwing mason to ground.** Same facts as in 170 Ill. 106. Scaffolding held to be a place or appliance which master is held to keep in safe condition. Judgment \$2,500. Affirmed.

C. & A. R. R. Co. v. Maroney, 170 Ill. 521.

**Defective floor in rolling mill—heater slipped and fell.** Floor had grown smooth from wear. Plaintiff was pulling paddle out of the “bosh” when his feet slipped and he fell to the floor; the heavy paddle on top of him. Floor had been in same condition for a year before injury; and foreman had promised to repair it. Judgment \$5,000. Reversed for failure to instruct the jury as to assumption of risk.

Ill. Steel Co. v. Mann, 170 Ill. 200 (67 Ill. App. 66 *reversed.*).

**Boy fourteen years old hit by a carcass in packing house.** Knife in his hand cut his arm. Judgment for plaintiff. Reversed for erroneous instruction on due care by plaintiff.

Swift & Co. v. Ruthowski, 167 Ill. 157 (see 182 Ill. 18).

**Hanging tongue in packing house—finger caught on one of the hooks.** Verdict directed for defendant. Affirmed.

Ryan v. Armour, 166 Ill 568.

**Defective switch on tramway in glue factory.** Employee pushing bucket along track injured. Employer had promised to repair. Judgment for plaintiff. Affirmed.

Swift & Co. v. Madden, 165 Ill. 41.

**File of iron-ore caved in on workman.** Had been ordered to work near it in night time. No warning. Judgment for plaintiff. Affirmed.

Ill. Steel Co. v. Schmanowski, 162 Ill. 447.

**Unsafe premises—workman fell into vat of hot grease.** Died. Work was outside his regular duties. Judgment \$5,000. Affirmed.

Hess v. Rosenthal, 160 Ill. 621.

**Roof of ladle oven fell.** Heated sand fell upon plaintiff severely burning head, face, arm and ankle. Judgment for plaintiff. Affirmed.

Cribben v. Callaghan, 156 Ill. 549.

**Unloading barge on Mississippi river.** Plaintiff fell into hole in the floor. Had worked near hole several hours. Judgment \$2,000. Reversed on ground of contributory negligence.

East St. Louis Ice Co. v. Crow, 155 Ill. 74.

**Hole in floor of building at Agricultural Fair.** Plaintiff fell into. Judgment for defendant. Affirmed.

Trucker v. Agricultural Board, 154 Ill. 593.

**Telegraph pole fell on laborer** who was digging trench at side of pole so it could be moved. Inexperienced and thought wires would hold pole. Foreman neglected to brace pole. Judgment \$5,000. Affirmed.

East St. Louis Con. Ry. Co. v. Euright, 152 Ill. 246.

**Workman stumbled over castings** and fell upon unguarded cog-wheels. Four fingers of left hand amputated. Inexperienced. Had been employed only two days. No warning. Judgment \$2,000. Affirmed.

Harris v. Shebek, 151 Ill. 287.

**Helper caught in cog-wheels.** Arm amputated. Engine had stopped on center. Plaintiff was ordered to get crowbar and force fly-wheel beyond center. Did so, but "top man" had turned on steam and plaintiff was caught by the crowbar and thrown upon the cog-wheels. Minor eighteen years old. Judgment for plaintiff. Affirmed.

Gartside Coal Co. v. Turk, 147 Ill. 120.

**Iron mold in steel mill fell over upon track repairer.** Had been left near track insufficiently secured on side of track in the converting mill. The "butt" had been left in the mold that fell. Leg amputated. Judgment \$5,000. Affirmed.

Joliet Steel Co. v. Shields, 146 Ill. 603.

**Barrel fell from pile striking employe working near.** Plaintiff assisting in piling barrels. Foreman had emptied a barrel that leaked, but left the empty barrel in the pile. This gave way. Leg broken above ankle. Judgment \$5,000. Affirmed.

Libby, McNeill & Libby v. Scherman, 146 Ill. 541.

**Unguarded differential gearing.** Employe's hand caught while he was sweeping and cleaning same. Broom caught and jerked left hand into gearing. Amputation. Boy seventeen years old. Judgment \$2,250. Reversed in supreme court because of instruction on assumed risk.

Heraman-Harrison Milling Co. v. Spehr, 145 Ill. 329.

**Hand caught under "Plunger" of brick pressing machine** and so crushed as to require amputation of arm. Minor inexperienced; sixteen years of age. Was not properly instructed as to the dangers incident to the machine. Judgment \$3,000. Affirmed.

Chicago Anderson Pressed Brick Co. v. Reinneiger, 140 Ill. 334.

**Slippery floor—operator of machine slipped** and hand was caught in knives of machine. Had complained to foreman who had promised to remedy the defect in the floor. Left hand cut off. Judgment \$2,500. Affirmed.

Weber Wagon Co. v. Kehl, 139 Ill. 644.

**Defective floor in foundry.** Employe stepped through hole, and foot was crushed by the "conveyor" of sand underneath. Inexperienced in the work he was ordered to do in operating the "conveyors." Floor could have been made safe. Judgment for plaintiff. Affirmed.

McCormick Machine Co. v. Burandt, 136 Ill. 170.

**Tank fell because of insufficient supports killing servant on top** who had been sent there after the owner had been informed by the contractor who built the tank, that the supports were not strong enough. The servant had no knowledge of the weakness. Judgment against both companies \$2,500. Affirmed.

Consolidated Ice Mch. Co. v. Keifer, 134 Ill. 481.

**Hand caught in machine.** Minor twelve years old ordered to wipe dangerous machinery No instruction as to the danger. Arm rendered useless. Judgment \$3,000 Affirmed.

Hinckley v. Horazdowsky, 133 Ill. 359.

**Defective barn door fell on expressman delivering wood.** Action against real estate agent having charge of the property and who knew of the defect. Judgment for plaintiff. Affirmed.

Baird v. Shipman, Admr., 132 Ill. 16.

**Independent contract of fire proofing on building.** Loose girder on the building fell and struck employe of mason contractor working below. Defendant had not put the girder in, but his servants were seeking to move it to a place of safety under orders of their foreman who knew it was loose. Judgment \$2,000. Affirmed.

Wight Fire Proofing Co. v. Poczakal, 130 Ill. 139.

**Pile of lumber fell over upon and killed a third person who chanced to be near it when it fell.** Lumber negligently piled without cross pieces to hold it; by teamsters working for defendant. Judgment \$2,500. Affirmed.

Andrews v. Boedecker, 126 Ill. 605.

**Broken wheel on escape valve caused the valve to be left open.** An explosion resulted, killing workman who was taking off the head of the mud-drum preparatory to cleaning the boiler. Master mechanic had been notified of the broken wheel. Judgment for plaintiff. Affirmed.

Calumet I. & S. Co. v. Martin, 115 Ill. 359.



**Child three years old playing in street killed by water pipe rolling off a negligently constructed pile in street.** Had been left there by teamsters. Brother four years old was with deceased. Judgment for plaintiff. Affirmed.

**Stafford v. Rubens, 115 Ill. 196.**

**Machine for hoisting stone defective.** Fell upon workman who knew there was a defect in it but not what the danger was. An attempt had been made to repair it. Plaintiff worked for independent contractor, who was constructing the building. Defendant paid doctor's bill and retained plaintiff after injury. Judgment \$1,000. Reversed because of failure of evidence to show notice of the defect to defendant.

**Richardson v. Cooper, 88 Ill. 270.**

**MINES AND MINING—CASES AND LAW.**

LAW AS TO.  
DEFECTIVE ROOF.  
DEFECTIVE WALL.  
DEFECTIVE DOOR.  
DEFECTIVE CAGE.  
MINER STRUCK BY CAR.  
MISCELLANEOUS.

**a. Law as to.**

Violation of Mine Act failure to inspect—shown.

Altrens Mining Co. v. Carnduff, 221 Ill. 354.

Notice to mine owner of gas in mine—shown.

Altrens Mining Co. v. Carnduff, 221 Ill. 354.

Duties of mine examiner discussion as to.

Henrietta Coal Co. v. Martin, 221 Ill. 460.

Declaration of mine examiner—competent.

Strens Mining Co. v. Carnduff, 221 Ill. 354.

Contributory negligence not involved where defendant has violated Mine Act.

Henrietta Coal Co. v. Martin, 221 Ill. 460.

Failure to provide safe place—shown.

Marquette Coal Co. v. Dielle, 208 Ill. 117.

Violation of Mine Act no attendant—shown.

Himrod Coal Co. v. Stevens, 203 Ill. 115.

Non-compliance with statute as to fencing shaft—shown.

Catlett v. Young, 143 Ill. 74.

Mine Act section eight, chapter ninety-three construed. Common law as to miners. Notice to agent is to owner.

Sangamon Coal Mining Co. v. Wiggerhaus, 122 Ill. 279.

**b. Mine Accidents—From Defective Roof.**

**Defective mine roof timber sagged down above track.** The coal on the car driven by plaintiff struck the timber thereby causing the injury. Car tipped up in front. Plaintiff passed under the roof fifteen or twenty times a day and was an experienced miner, but while driving the car he had to keep his attention on the track ahead. Judgment \$3,500. Reversed and remanded for evidence.

*Jones & Adams Co. v. George*, 227 Ill. 64.

**Mine accident.** Slate fell from defective roof injuring miner. Failure to provide props. Judgment \$8,000. Affirmed.

*Donk Bros. Coal Co. v. Lucis*, 226 Ill. 23.

**Defective mine roof—injured while repairing.** Miner injured by fall of roof. Mine examiner had inspected roof and marked it as dangerous. Deceased with other miners was sent to repair it. While attempting repairs roof fell upon deceased. Mine manager did not direct the repairs personally. Construction of statute as to manager not allowing miners in dangerous place except under his direction. Held he need not direct repairs personally. Judgment \$1,700. Reversed and remanded in supreme court because of instruction requiring manager to direct repairing.

*Kellyville Coal Co. v. Bruzas*, 223 Ill. 595 (10-06).

**Defective mine roof—clod fell—insufficient props.** Miner injured. Clod from roof fell on him. Had requested props. Manager knew condition of roof. Improper props had been sent. Walls not marked. Judgment \$8,500. Affirmed.

*Henrietta Coal Co. v. Martin*, 221 Ill. 460 (4-06).

**Hole in roof of mine—piece of coal fell through.** Laborer working in coal chute Piece of coal fell through hole in the roof and struck plaintiff, fracturing his skull. He knew of hole but did not know it was over where he passed. Judgment

\$2,500. Affirmed in appellate; reversed and remanded in supreme court.

Montgomery Coal Co. v. Barringer, 218 Ill. 327 (10-05).

**Defective mine roof—rock fell—props.** Rock fell from roof of mine striking miner. Plaintiff knew roof was loose, timber had been ordered. Examiner had marked defect, but owing to wetness marks were indistinct. Judgment for plaintiff. Affirmed.

Kellyville Coal Co. v. Strine, 217 Ill. 516 (10-05).

**Defective mine roof—debris fell on track.** Mule driver in mine injured. Part of roof fell upon track. Car ran into the debris in dark passage. Judgment \$3,500. Affirmed.

Muren Coal & Ice Co. v. Howell, 217 Ill. 190 (10-05).

**Defective mine roof—rock fell striking boy in passageway.** Boy of sixteen years worked with father in mine. Was sawing timber in passageway to make a prop. Rock fell from roof of passage way striking and injuring him. Judgment \$5,000. Affirmed.

C. W. & V. Coal Co. v. Noran, 211 Ill. 9 (6-04).

**Defective mine roof—insufficient props.** Owing to failure to provide sufficient "props" mine roof fell upon deceased, who was employed by defendant as machine-runner. Suit by administrator. Judgment for plaintiff. Affirmed.

Himrod Coal Co. v. Clark, Admr., 197 Ill. 514 (6-02).

**Defective mine roof—insufficient props.** Plaintiff was driver in a mine, hauling out loaded cars. Was returning with empty cars. A piece of slate and rock fell from roof injuring him. Failure to provide proper props—under Mine Act. Judgment for plaintiff. Affirmed in appellate and supreme courts.

Consolidated Coal Co. v. Lundak, 196 Ill. 594 (4-02).

**Defective mine roof—debris on track—miner injured.** Mine owner failed to maintain clear road ways. Plaintiff was caught

by the roof of mine and thrown against a "trip" of cars. Condition of roof had been reported to defendant. Judgment \$1,200. Affirmed in appellate and supreme courts.

Spring Valley Coal Co. v. Ronatt, 196 Ill. 156 (4-02).

**Defective mine roof—rock fell striking miner.** Miner was killed by fall of rock from roof—no proper props. Suit by mother who is an alien, is proper. Judgment \$1,650. Affirmed in appellate and supreme courts.

Kellyville Coal Co. v. Petrayths, 195 Ill. 215 (2-02).

**Defective mine roof—rock fell killing miner.** Coal miner killed by rock falling from roof of mine. Props had been requested but not supplied. Mine Act. Judgment \$4,000. Affirmed.

Western A. C. & C. Co. v. Beaver et al., 192 Ill. 333 (10-01).

**Defective mine roof—no props.** Miner injured by fall of roof owing to failure to provide props. Violation of statute. Judgment \$3,000. Affirmed.

Mount Olive Coal Co. v. Rademacher, 190 Ill. 538 (6-01).

**Defective mine roof—piece of slate fell.** Miner injured by the falling of a piece of slate from the roof of mine. Leg broken. Failure to supply props. Judgment \$1,500. Affirmed.

Mount Olive & S. Coal Co. v. Herbeck, 190 Ill. 39 (4-01).

**Driver in mine kicked by mule—fell over obstruction.** Mule driver in mine was kicked by mule, thrown against obstructions on track and under car. Crushing leg. Failure to keep road way clear of obstructions. Request by plaintiff that passage be cleared. Question of release obtained by fraud. Judgment for plaintiff. Reversed and remanded for erroneous instructions as to release.

The Pawnee Coal Co. v. Royce, 184 Ill. 402 (2-00).

**Defective mine roof—clod fell.** Miner killed by fall of clod from roof. Unqualified man employed as mine boss. Constitu-

tionality of Mine Act considered on demurrer. Act held bad as to third parties. Judgment for defendant on pleadings. Affirmed.

Woodruff v. Kellyville Coal Co., 182 Ill. 480 (10-99).

**Mine driver fell over debris near track—in front of car.** Driver in coal mine injured by stumbling over slack and debris on side of track, and falling in front of car. Debris had fallen from defective roof. Insufficient props. Statute did not abrogate common law liability of master. Notice to repair given. Judgment for plaintiff. Affirmed.

Consolidated Coal Co. v. BoKamp, 181 Ill. 9 (6-99).

**Defective mine roof.** Coal fell on miner—statute. Judgment for plaintiff (75 Ill. Appt. 631) reversed.

Sugar Creek Mining Co. v. Peterson, 177 Ill. 324 (12-98).

**Defective mine roof.** Slate fell striking boy driving mule. Leg amputated below knee. Judgment \$7,566.35. Affirmed.

Consolidated Coal Co. v. Scheiber, 167 Ill. 539.

**Mine accident.** Employe loading coal into cars. Rock overhung place where he worked. Complained to pit boss who told him to keep at work, the rock would not fall. Did so. Rock fell upon him causing injury resulting in permanent disability. Judgment \$2,500. Affirmed.

Consolidated Coal Co. v. Wombacher, 134 Ill. 64.

**Miner injured by fall of roof.** Mine Act, Sec. 16. Leg broken. Judgment \$1,000. Affirmed.

Donk Bros. C. & C. Co. v. Peton, 192 Ill. 41 (10-01).

**Boy fourteen years of age killed by falling rock from roof of mine while pushing cars.** Judgment \$1,142. Reversed because of refusal of a new trial on the ground of variance in that the declaration named only the father as next of kin and the proof showed others.

Quincy Coal Co. v. Hood, 77 Ill. 68.

**c. Defective Wall.**

**Mine wall too thin—"shot" broke the wall.** Miner injured while working in mine. Foreman allowed wall to become too thin. Shot of dynamite broke wall. Foreman had assured plaintiff there was no danger, to continue working. Judgment for plaintiff. Affirmed.

*Consolidated Coal Co. v. Shepherd*, 220 Ill. 123 (2-06).

**Defective coal wall fell upon miner.** Miner injured by fall of coal wall upon which he was working. Wall was in unsafe condition, as known to defendant's foreman. Failure to warn of danger. Judgment \$6,000. Affirmed.

*Consolidated Coal Co. v. Gruber*, 188 Ill. 584 (12-00).

**d. Defective Door.**

**Defective mine door—miner injured.** Mine mule driver caught between mine door and car. Violation Mine Act. Judgment \$1,500. Affirmed. 1. Violation Mine Act—no automatic doors. 2. Motion to instruct—properly denied. 3. "Permanent door" defined.

*Madison Coal Co. v. Hayes*, 215 Ill. 625 (6-05).

**Boy injured in mine—under fourteen years.** Child under fourteen employed without affidavit of age, as trapper to open doors as cars passed. Car became stalled near door. Owing to a beam projecting from wall, plaintiff was caught between it and car when car started. Had never noticed the beam was so close to track. Violation of statute. Judgment \$4,000. Affirmed.

*Marquette Coal Co. v. Diehe*, 208 Ill. 117 (2-04).

**Mine accident.** Defective doors—insufficient place of refuge in wall. Miner injured. Violation of statute. Judgment for plaintiff. Affirmed.

*Sangamon Coal Mining Co. v. Wiggerhaus*, 122 Ill. 279.

**e. Defective Cage.**

**Mine elevator fell.** Miner injured by fall of elevator as he was getting out at bottom of shaft. Arm amputated. Judgment \$3,000. Affirmed.

*Illinois Third Vein Coal Co. v. Cloni*, 215 Ill. 583 (6-05).

**High speed of mine cage being lowered.** Miner injured while being lowered in cage. Prohibited speed. Six hundred feet per minute. Judgment \$3,500. Affirmed.

*J. Taylor Coal Co. v. Dawes*, 220 Ill. 145 (2-06).

**Mine cage run too fast—struck bottom of shaft.** A miner employed by defendant in mine 500 feet deep. Elevator operated by engineer who could not see elevator but worked on signal. Ran too fast, struck bottom of shaft injuring plaintiff who was riding in cage. Judgment \$2,500. Affirmed.

*Spring Valley Coal Co. v. Buzis*, 213 Ill. 341 (2-05).

**Defective mine-cage brake—fell.** Miner injured by falling of the cage because of insufficient brake. Violation of the Mine Act. Judgment \$10,000. Affirmed.

*Spring Valley Coal Co. v. Patting*, 211 Ill. 342 (6-04).

**Miner struck by "bonnet" of cage while being lowered.** Father, brother and sisters sued for killing of deceased in mine. Was struck by the "bonnet" on top of cage, while it was being lowered into mine, he being near the opening of the shaft. Brother and sisters no right of action. Judgment \$1,000. Reversed for new trial—Mine Act.

*Willis Coal & Mining Co. v. Grizzell*, 198 Ill. 313 (10-02).

**Defective mine cage—brake out of repair.** Mine cage fell too rapidly striking bottom—defective brake—miner in cage injured—incompetent engineer. Examination where witness denies written statement made day following injury—wide latitude. Judgment for plaintiff. Affirmed.

*Consolidated Coal Co. v. Seniger*, 179 Ill. 370 (4-99).



**Miner fell down elevator shaft of mine.** Incompetent engineer. Cage had stopped at top, but started as deceased was getting out owing to engineer leaving relief valve closed. Deceased thrown into and down the shaft. Judgment \$5,000. Affirmed.

Consolidated Coal Co. v. Maehl, 130 Ill. 551.

**Mine accident. Defective brake on cage.** Cage fell down shaft upon miner working there by order of foreman. Action by wife. Judgment \$3,500. Affirmed.

Beard, et. al., v. Skeldon, 113 Ill. 584.

**Neglect of mine engineer—cage fell.** Miner injured. Judgment for plaintiff. Reversed because of instruction on negligence and on damages.

Jock v. Dankwardt, 85 Ill. 331.

**Mine Act—defective cage.** Defendant used uncovered cage to carry miners in and out of mine—violation of Mine Act—coal fell into cage striking miner on head causing his death. Judgment \$1,500. Affirmed.

Litchfield Coal Co. v. Taylor, 81 Ill. 590.

**Defective mine cage.** Rope broke; cage dropped. Miner injured. Rope old and had been spliced. Owner had been notified. Judgment \$587. Affirmed.

Perry v. Ricketts, 55 Ill. 234.

#### **f. Miners Struck by Cars.**

**Car run into mine—no light or warning—killed miner.** Miner killed by negligence in running a car into mine without lights, attendant or warning. It struck and killed deceased. Ten per cent. damages allowed for delay. Judgment \$3,000. Affirmed.

Spring Valley Coal Co. v. Chiauentone, 214 Ill. 314.

**Collision in mine—car standing on track.** Miner employed by defendant was hauling cars from bottom of coal shaft.

The manager ran in an extra train of cars and left one standing on track. Called to plaintiff to come ahead. He did so and ran into the extra car left on track. Died from his injuries. Judgment \$3,000. Affirmed.

Consolidated Coal Co. v. Fleischbein, Admr., 207 Ill. 593 (2-04).

**Empty car on track in mine—collision—driver injured.** Miner injured. Loaded car driven by mule driver ran against empty car, throwing it against plaintiff. Judgment \$1,500. Affirmed.

Spring Valley Coal Co. v. Robiza, 207 Ill. 226 (2-04).

**Miner loading coal into car injured by car switched against him by other servants while he was at work.** Car plaintiff was loading thrown against him. Judgment for plaintiff. Affirmed.

Wenona Coal Co. v. Holmquist, 152 Ill. 581.

**Mine accident.** Miner struck by car full of coal on down grade. Went in front of car to remove obstacle from track that blocked car. Did not know of the down grade and had not been informed by owner. Had no knowledge of the mine. When he removed obstacle, car started down. Judgment \$1,500. Affirmed.

Consolidated Coal Co. v. Bruce, 150 Ill. 449.

#### **g. Miscellaneous.**

**Insufficient light in mine shaft.** Miner fell into excavation or "sump." Plaintiff carried no light. Violation of statute as to light and keeping man on guard. Section 28, Mine Act. Judgment \$1,000. Affirmed.

Eldorado Coal Co. v. Swan, 227 Ill. 586.

**Bolt holding foot lever by which mine hoisting machinery was operated broke.** Engineer killed. Machinery had not been inspected as required by statute. Judgment \$4,000. Affirmed.

Spring Valley Coal Co. v. Greig, 226 Ill. 511.

**Miner suffocated—defective air circulation.** Miner suffocated in mine owing to defective circulation of air. Smoke and bad air not drawn out. Judgment for plaintiff. Affirmed.

*The Wilmington & S. Coal Co. v. Sloan*, 225 Ill. 467 (2-07).

**Miner injured—practice.** Deceased was employed by defendant in mine. Discussion section 14, Pr. Act—Conflict of Evidence. Changing place of case on docket—discussion. Judgment for plaintiff. Affirmed.

*Staunton Coal Co. v. Menk, Admx.*, 197 Ill. 369 (6-02).

**Mine inspectors—statute constitutional.** The statute establishing mine inspectors to be appointed by the state and paid by the mine owner held constitutional.

*Consolidated Coal Co. v. The People*, 186 Ill. 134 (6-00).

**Mine blacksmith fell down escapement shaft.** Mine blacksmith while descending escapement shaft by means of a ladder, fell from last platform to bottom. Failure to conform escapement to statute. Copies of instructions. Judgment for plaintiff. Affirmed.

*Carterville Coal Co. v. Abbott*, 181 Ill. 495 (10-99).

**Barrel fell down mine striking miner.** Negligence of servants at the top of the shaft. Judgment for plaintiff. Affirmed.

*Springfield Mining Co. v. Grogan*, 169 Ill. 50 (67 Ill. App. 487 affd).

**Mine accident.** Miner fell down shaft owing to absence of fence gates as required by statute. Statute construed. Action by wife. Judgment \$2,000. Affirmed.

*Catlett v. Young*, 143 Ill. 74.

**Mine accident.** Death caused by want of second escapement. Miner fell down shaft. Judgment for plaintiff. Affirmed.

*Wesley City Coal Co. v. Healer*, 84 Ill. 126.

**Mine accident.** Negligence in failing to comply with the provision of section 8 of the Mine Act in reference to fencing the top of the shaft. Miner fell into shaft and was killed. Action by next of kin. Judgment \$800. Affirmed.

*Bartlett Coal & C. M. Co. v. Roach*, 68 Ill. 174.

**MISCELLANEOUS ACCIDENTS AND ACTIONS.**

No facts.

Chaplin v. Ill. T. R. R. Co., 227 Ill. 169.

**Physician brought smallpox into plaintiff's family.** Physician infected plaintiff and his children with smallpox while treating them. Was treating smallpox patient at same time. Judgment for defendant. Affirmed. Question of when appeal may be had when judgment is for defendant—certificate of importance.

Haas v. Tegtmeier, 225 Ill. 275 (2-07).

**Keg fell off wagon hitting child in street.** Beer wagon going at a gallop, loosely loaded with empty kegs. One keg fell from wagon striking plaintiff, boy seven years old. Driver was intoxicated. Judgment \$10,000. Affirmed.

Cook Brewing Co. v. Ryan, 223 Ill. 382 (10-06).

**Action within one year after non-suit.** No facts. Section 25 of Statute of Limitations allowing *one year after non-suit* for new action, applies only to involuntary non-suit. Involuntary non-suit defined. "Stare decisis."

Koch, Admr., v. Sheppard, 223 Ill. 172 (10-06).

**Icicles fell through window hitting child.** Icicles gathered on gutter pipe of building and breaking off fell through window and struck child one-half year old. Owner had been notified but did nothing but put salt on ice. Judgment \$1,500. Affirmed.

Richardson v. Nelson, 221 Ill. 254 (4-06).

**One on right of way by license hit by engine.** Deceased was employed by electric light company attending to lights. One

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light was on defendant's right of way. Carbons were changed daily. Deceased was struck by a switch engine as he stood near the track near lamp. No bell. Track was obscured by steam from another engine that had just passed. Suit by administratrix. Judgment for plaintiff. Affirmed.

*E. J. & E. R. R. Co. v. Hoadley, Admx.*, 220 Ill. 463 (2-06)

**Packed meat poisoned consumer.** Mince-meat packed by defendant was eaten by deceased causing her death. Meat was canned in Kansas and was bought in regular course of trade in Kansas. Suit brought in Illinois, pleading Kansas food statute. Declaration held to state good cause of action. Demurrer to Statute of Limitations was overruled and cause dismissed. Reversed and remanded in supreme court.

*Salmon, Exec. v. Libby, McNeil & Libby*, 219 Ill. (12-05).

**Judgment by default—set aside.** Judgment for plaintiff—execution issued—proceedings. Judgment \$5,000. Reversed in appellate court. Reversed in supreme court affirming circuit court.

*Wenham et. al. v. International Packing Co.*, 213 Ill. 397.

**Student injured by negligence of university professor.** Student of university injured by negligence of one of its professors. No recovery in such case against charitable institution. Verdict directed for defendant. Affirmed.

*Parks v. Northwestern University*, 218 Ill. 381 (12-05).

**Piece of timber stuck out from car—struck man on platform.** Piece of timber stuck out some distance from car on which it had been loaded. Plaintiff was standing on the platform and was hit by end of the timber as car passed. *Res ipsa loquitur*. Judgment for plaintiff. Reversed and remanded—defendant's negligence not shown.

*C. & E. I. R. R. Co. v. Reilly*, 212 Ill. 506 (12-04).

**Banana peel on sidewalk—passage obstructed—slipped.** Defendant piled boxes on sidewalk in front of his fruit store, leaving but small passage way for travel. Plaintiff slipped on banana peel in passage way and fell. Judgment \$3,500. Affirmed.

*Garibaldi & Cuneo v. O'Connor*, 210 Ill. 284 (6-04).

**Employee loaned to another—not his regular work—injured.** Laborer directed by foreman to assist in lifting iron beams. The work was outside his regular employment and not for his employer but a third party. Beam slipped and fell on him. No instruction as to danger. Judgment for plaintiff. Affirmed.

*Grace & Hyde Co. v. Probst*, 208 Ill. 147 (2-04).

No facts in supreme court report. Judgment for plaintiff. Affirmed.

*C. C. Ry. Co. v. Handy*, 208 Ill. 81 (2-04).

**Judgment by default.** Jury returned verdict \$10,000. See 101 Ill. App. 252.

*Donaldson v. Copeland*, 201 Ill. 540 (2-03).

**Defectively piled lumber fell over upon child.** Child, three years old, playing on sidewalk with brother seven years old and sister nine, in front of home. Defendant had piled lumber on sidewalk seventy feet west of home. As the child passed the lumber pile, boards fell off killing her. Negligent piling. Judgment \$2,250. Affirmed.

*True & True Co. v. Woda, Admx.*, 201 Ill. 315 (2-03).

**Charivari—one shot by accidental discharge of pistol.** Charivari party at wedding. Firing guns, pistols, etc. One of the party accidentally shot, by another who carelessly handled revolver. Judgment \$1,500. Reversed in supreme court on ground that both parties were engaged in illegal acts.

*Gilmore v. Fuller*, 198 Ill. 130 (10-02).

**Child hit by train—putting “pins on track.”** Child under seven years, placing “pins on the tracks.” Had gotten out of

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the way of one car "kicked" back. Did not see the rest of the train backing down at excessive speed. Right leg amputated. Judgment \$4,000. Affirmed.

I. C. R. R. Co. v. Jernigan, 198 Ill. 29 (10-02).

**Sickness caused by sewer gas—no cause of action.** Sewer gas in house leased by plaintiff caused sickness of himself and family. Trial court sustained demurrer to declaration. Reversed in supreme court and demurrer ordered overruled.

Sunasack v. Morcy, 196 Ill. 569 (4-02).

**Boy chased off opening swing bridge—fell off.** Boy was on bridge over Chicago River as it started to open. Assistant bridge tender chased boy. Bridge turned just as boy jumped and he landed between bridge and abutment. Bridge tender was a city employe. Judgment for plaintiff. Affirmed.

City of Chicago v. O'Malley, 196 Ill. 197 (4-02).

**Bicycle rider collided with train at crossing.** Bicycle rider collided with train, at railroad crossing and was killed. Train run by sub-lessee of defendant who leased from owners. Discussion. Judgment for plaintiff. Affirmed.

Suburban Ry. Co. v. Balkwil, Admr., 195 Ill. 535 (2-02).

No facts. Verdict directed. Writ of error, dismissed for want of jurisdiction, judgment for costs being less than \$1,000. No certificate of importance.

Robards v. Wabash R. Co., 194 Ill. 361 (2-02).

No facts. (See 91 Ill. Appt. 563.) Judgment \$8,000. Reversed in appellate without remanding. Release held valid. Discussion of what fraud voids a release.

Papke v. Hammond Co., 192 Ill. 631 (10-01).

**Explosion of fireworks—Fourth of July.** Explosion of fireworks at Fourth of July celebration. Employes of defendant had charge of setting off the fireworks; which they left exposed. Case against city dismissed after arguments. (See same case, 206 Ill. 283.) Judgment \$4,000. Reversed and re-

manded because of dismissal of case against city so as to prejudice defendant.

Consolidated Fireworks Co. v. Koehl, 190 Ill. 145.

**Boy sliding on ice broke through.** Boy, fifteen years of age, was sliding over the ice on a clay hole on defendant's property. Ice gave way and he was drowned. Boy had known the place for years. Judgment \$600. Reversed on ground of contributory negligence shown.

Heiman v. Kinnare, 190 Ill. 157 (4-01).

**Hot bolt thrown to riveter—missed—struck man below.** Red hot bolt missed by a riveter to whom it was thrown fell to floor below striking tile-setter employed by defendant, a sub-contractor. Failure to provide safe place for workman. Judgment \$1,000. Affirmed.

Pioneer Fireproof Car Co. v. Howell, 189 Ill. 123 (2-01).

**Action by non compos mentis.** Action begun by one non compos mentis. His attorney dismissed. Motion by conservator to reinstate granted and trial had. No facts. Judgment for plaintiff. Affirmed.

Consolidated Coal Co. v. Oeltjen Con., 189 Ill. 34 (2-01).

**Fell from window in fire—insufficient fire-escape.** Deceased killed by falling from window of burning building. Violation of statute as to fire-escapes. Verdict directed for defendant. Reversed and remanded there being evidence tending to prove negligence.

Landgraf, Admr., v. Kuh, 188 Ill. 484 (12-00).

**Smoke stack fell through skylight.** Smoke stack fell through skylight, striking plaintiff. Judgment for plaintiff. Affirmed.

Boyce v. Snow, 187 Ill. 181 (10-00).

**Horse broke loose—ran over child in street.** Defendant's coachman was unharnessing defendant's horses in barn, when they broke loose, ran into public street and one of them ran



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over and injured plaintiff, a child of eight years old. Negligence in permitting horses to get loose. Judgment for plaintiff. Affirmed.

Maxwell v. Durkin, 185 Ill. 546 (4-00)

**Trespasser on premises assaulted by employe.** Plaintiff while on the premises of the defendant was assaulted by a servant of defendant. Plaintiff was a trespasser on the premises. More force than necessary used. Judgment \$1,000. Affirmed.

Ill. Steel Co. v. Norak, 184 Ill. 501 (2-00).

**Cattle infected with fever on cars.** Cattle shipper shipped cattle over defendant's road. On the way they became infected with Texas fever; twenty-six died. Judgment for plaintiff. Affirmed.

I. C. R. R. Co. v. Harris, 184 Ill. 57 (2-00).

**Smoke stack fell through skylight.** Plaintiff worked under a skylight in building adjoining one owned by defendant. A smoke stack on defendant's building fell upon the skylight. Falling glass injured plaintiff. Smokestack defective. Judgment \$2,000. Affirmed.

Boyce v. Tallerman, 183 Ill. 115 (12-99).

**Boy jumped from boat to dock—fell.** Boat on which plaintiff was riding (he being a water boy to the employes) started off from shore. He undertook to jump to the dock and was injured. No danger. Judgment for defendant. (No cause of action.) Affirmed.

F. Atkins v. Lackawanna T. Co., 182 Ill. 237 (10-99).

**Lumber pile fell on stevedore.** Plaintiff was employed by contractor unloading lumber from a boat. While passing near a lumber pile on shore, placed there by the shore gang employed by defendant to whom it was handed by the gang on the boat, the pile fell over onto plaintiff. Careless piling proximate cause. Judgment \$1,000. Affirmed.

John Sprey Lumber Co. v. Duggan, 182 Ill. 218 (10-99).

Defendant was a boiler firm who sent plaintiff to a factory to repair boiler for Western Tube company. Plaintiff entered the boiler to repair it and while there steam was carelessly let in on him. No indications of danger were visible. Defendant's vice-president looked after the job and arranged to have the boilers ready for the repairers. Judgment \$2,500. Affirmed.

*Kewanee Boiler Co. v. Erickson*, 181 Ill. 549 (10-99).

**Involuntary non-suit—what is.** No facts—discussion of statute of limitations giving non-suited plaintiff one year after involuntary non-suit. What is involuntary non-suit. Cause of action must be identical, which identity must appear from the record. (See *Holmes v. C. & A. R. R. Co.*, 94 Ill. 439.) Judgment for defendant. Affirmed.

*G. A. Gibbs v. Crane Elevator Co.*, 180 Ill. 191 (6-99).

**Rent collector frightened tenant.** Rent collector entered plaintiff's house and frightened her by the use of threats and loud talking so as to impair her health. Judgment \$9,000. Reversed in appellate court. Affirmed. No cause of action.

*Braun v. Craven*, 175 Ill. 401.

**Unloading heavy barrels from wagon—one fell on plaintiff.** Plaintiff and foreman were unloading barrels out of back end of wagon. One slipped from their hands and struck plaintiff's leg. Judgment for plaintiff reversed in appellate court. Reversal affirmed in supreme court. Foreman assisted plaintiff.

*Gall v. Beckstein*, 173 Ill. 187.

**Injury due to the negligence of the board of education.** Demurrer to the declaration was sustained on the ground that there is no cause of action against the board of education for negligence. The school board acts as agent for the state.

*Kinnare v. City of Chicago*, 171 Ill. 332 (70 Ill. Appt. 106 affd).

**Assignment of part of cause of action to attorney.** Plaintiff made a contract assigning a part of the cause to his attorney

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and then settled the case out of court. The attorney sued defendant in the damage case and secured judgment on the assignment. Judgment was reversed on the ground that action for personal injury is not assignable. Contract for fee held good though contingent.

N. C. St. Ry. Co. v. Ackley, 171 Ill. 100 (58 Ill. Appt. 572 affd.).

**Action barred by statute of limitations.** Judgment for plaintiff. Reversed by appellate court. Affirmed by supreme court. Eysenfeldt v. Ill. Steel Co., 165 Ill. 185.

**Oyster stew poisoned consumer.** Eaten in restaurant. Defendant's negligence not shown. Judgment for defendant. Affirmed.

Sheffer v. Willoughby, 163 Ill. 518.

**No facts.** Judgment for plaintiff. Affirmed.

City Elec. Ry. Co. v. Jones, 161 Ill. 147.

**Runaway team hit child on sidewalk.** Negligence of driver handling team. Judgment \$2,500. Affirmed.

Union Rendering Co. v. Kreft, 159 Ill. 381.

**Runaway horse at races struck spectator.** Defendant's negligence not shown. Cases reviewed. Horse not under control of defendant. Judgment for defendant. Affirmed.

Hart v. Washington Park Club, 157 Ill. 9.

**Child drowned in pit made by city on lots owned by it, and left full of water.** Failure to drain. Judgment for plaintiff. Affirmed.

City of Pekin v. McMahon, 154 Ill. 141.

**No facts.** Foot cut off by locomotive. Judgment \$1,800. Affirmed.

C. & A. R. R. Co. v. Gomes, 153 Ill. 208.

**Barber pole on edge of sidewalk knocked over on to plaintiff.** Wagon backed up against the pole knocking it over. Plaintiff

tried to catch pole and was injured. Pole weighed five hundred pounds. Action against driver's employer. Judgment for plaintiff. Affirmed.

*L. Wolf Mfg. Co. v. Wilson*, 152 Ill. 9.

**Horses ran away killing driver.** A spout on a drinking fountain caught the horse's bridle frightening him and pulling bridle off. City knew of the construction of fountain. Other horses had been caught the same way. Judgment \$1,000. Affirmed.

*City of Bloomington v. Legg, Admr.*, 151 Ill. 10.

**Smoke stack being raised fell** owing to defective method of placing the hoisting ropes. The rope slipped off the pipe and fell striking plaintiff's leg and cutting it off below the knee. The work was outside of regular employment. Judgment \$5,000. Affirmed.

*Consolidated Coal Co. v. Haenni*, 146 Ill. 614.

**Schooner ran against grain elevator** and struck a scaffolding on which deceased was working on the side of the elevator, tipping it and throwing him to the ground. The schooner was being towed by a tug boat against the owner of which action was brought. Judgment for plaintiff. Affirmed.

*Dunham Towing Co. v. Dandelin*, 143 Ill. 409.

**Judgment for defendant.** Affirmed in appellate court. Writ of error to supreme court. No certificate of importance. Case tried by a jury. Writ of error dismissed under section 8, Appellate Court. Act of 1877. (113 Ill. 136, and 117 Ill. 150, re-affirmed.)

*Fitzpatrick v. C. & W. I. R. R. Co.*, 139 Ill. 248.

**No facts.** For facts see 146-603, same case. Judgment \$3,000. Reversed for erroneous instruction.

*Joliet Steel Co. v. Shields*, 134 Ill. 209.

**Plaintiff was struck by bullet from policeman's revolver.** He was seeking to kill a dog when the bullet struck the plaintiff.

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**Demurrer to declaration sustained. Affirmed in upper courts. No cause of action.**

**Culver v. City of Streator, 130 Ill. 238.**

**A mob attacked a train load of scab workmen being taken from Joliet to Chicago. A passenger in the car was shot by a stray bullet during the attack. Judgment for plaintiff. Affirmed. Two judges dissent.**

**C. & A. R. R. Co. v. Pillsbury, 123 Ill. 11.**

**Insane person shot woman. Action against his estate to recover damages for the woman's death. Judgment \$2,500. Affirmed.**

**McIntyre v. Sholty, 121 Ill. 660.**

**Poisonous gas in room. Servant not knowing of same ordered to work there by foreman knowing presence of gas. Servant was overcome and fell from ladder to floor and was killed. Judgment \$3,500. Affirmed.**

**Citizens' Gas Light Co. v. O'Brien, 118 Ill. 175**

**Incompetent servant. Negligence of incompetent engineer resulted in loss of a hand by plaintiff. No further facts. Judgment \$5,000. Affirmed.**

**U. S. Rolling Stock Co. v. Wilder, 116 Ill. 100.**

**Incompetent servant. Servant injured by the negligence of. Plaintiff knew of said incompetence and made no complaint. Judgment for plaintiff. Reversed without remand in appellate court on ground that plaintiff knew of incompetency and assumed the risk, and also that he was a fellow-servant.**

**Stafford v. C. B. & Q. R. R. Co., 114 Ill. 244.**

**Ejected colored man from public omnibus by order of the president of the company. Action against said president as an individual. Plaintiff was injured. Judgment \$2,600. Affirmed.**

**Peck v. Cooper, 112 Ill. 192.**

**Wall built too near track. Switchman riding on engine struck. Knocked off and killed. Judgment \$4,000. Reversed**

because general instruction for plaintiff omitted the element of due care by plaintiff.

*N. C. Rolling Mill Co. v. Morrissey*, 111 Ill. 646.

**Platform built too near track.** Brakeman caught between platform and car while seeking to make a coupling, and killed. Judgment for plaintiff. Reversed because of erroneous instruction on assumed risk and comparative negligence.

*C., R. I. & P. Ry. Co. v. Clark*, 108 Ill. 114.

**Powder put in smoking tobacco.** Explosion causing injury to eyes. Practical joke. This action is suit on note for \$1,000 in settlement of the damage. Defense was no consideration. Judgment for plaintiff. Affirmed.

*Parker v. Enslow*, 102 Ill. 272.

**Boy caught by drawbridge on Chicago River.** Jumped before bridge was closed. Arm caught and broken. Child four years old. Judgment \$3,000. Reversed in Appellate court because evidence failed to prove allegation of declaration.

*Gavin v. City of Chicago*, 97 Ill. 66.

**Court house being constructed by county.** Fell in course of construction, killing workman. Being built under supervision of board of supervisors. Iron left without sufficient lateral support. Building being built by independent contractor with right of committee to visit, inspect and require changes. Demurrer sustained. Affirmed on ground of no action against county in such case. Cases reviewed.

*Hollenbeck, Admx., v. Winnebago Co.*, 95 Ill. 148.

**Landing passengers from steamboat on Mississippi River.** Stage plank fell as passenger was upon it leaving boat. Wind blew the boat around pulling plank off its support. Signed release. Could not read or write. Judgment for plaintiff. Affirmed.

*Eagle Packet Co. v. Defries*, 94 Ill. 598.

**Passenger getting off of steam boat injured.** Was struck by a box carried by employee of defendant. Fracture of bones of the neck. Judgment \$3,600. Affirmed.

*Koekuk L. Packet Co. v. True*, 88 Ill. 608.

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**Ejecting tenant from house.** No force used, no injury resulted. Judgment \$1,250. Reversed because of excessive damages.

*Cochrane v. Tuttle*, 75 Ill. 361.

**Skylight left uncovered.** It rained through the opening thereby damaging the goods of the tenant occupying the first story. Landlord occupied second floor and employed the workmen to put in skylight. Action against landlord. Judgment \$1,133. (25 Ill. 424, distinguished.) Affirmed.

*Glickauf v. Maurer*, 75 Ill. 289.

**Driving wagon upon ferry boat.** Plaintiff ordered by captain of ferry boat to turn his wagon after he got into the boat in doing so he fell off and wagon ran over his foot. Action against ferry boat company. A depression in the floor of the ferry boat caused plaintiff to fall. Judgment \$140. Affirmed.

*Wiggins Ferry Co. v. Higgins*, 72 Ill. 517.

**Lady entering omnibus injured.** Foot caught between step and a passing wagon. Negligence of driver alleged. Judgment \$2,200. Reversed because the damages were excessive.

*Kolb v. O'Brien*, 86 Ill. 210.

**Hole in wharf.** Hole two feet in diameter plaintiff fell into—was a passenger but paid no fare. Judgment \$1,000. Reversed because plaintiff failed to exercise due care.

*Grand Tower M. & T. Co. v. Hawkins*, 72 Ill. 386.

**Amphitheater in fair grounds fell.** Lady injured,—accident due to negligent construction—continuous pain, probable paralysis. Judgment for plaintiff \$5,000. Affirmed.

*Latham et al. v. Roach*, 72 Ill. 179.

**Defective ladder fell.** Workman thrown to the ground, plaintiff had used the ladder constantly. Judgment for plaintiff. Reversed because of failure to exercise due care to see that the ladder was safe.

*T. W. & W. Ry. Co. v. Eddy*, 72 Ill. 138.

**Passenger of steam boat jumped to shore and was injured.** Plaintiff landed on snow on wharf covering hard substance.

Requested defendant to allow him to land, which was refused—captain of boat ordered plaintiff to jump. Judgment \$2,500. Affirmed.

Northern L. Packet Co. v. Binninger, 70 Ill. 571.

**Open draw over Chicago River.** No guards to prevent travelers falling into the river. Plaintiff drove horse over the abutment—horse drowned—no lights—dark and rainy night. Judgment for plaintiff. Affirmed.

City of Chicago v. Wright, 68 Ill. 586.

**Injury due to fellow-servant.** Minor injured. Plaintiff, a minor, was assisting in handling cars on tracks of defendant. Other servants of defendant switched cars against the cars about which plaintiff was working, causing the injury. Judgment for defendant on the ground that the relation of fellow-servants was shown. Affirmed.

Gartland v. T. W. & W. Ry. Co., 67 Ill. 493.

**Negligent unloading of lumber car.** Plaintiff was walking along platform of defendant, railroad company, to ascertain when certain train left. Employees of defendant were unloading a lumber car and negligently threw a piece of timber so that it struck plaintiff. Judgment \$235. Affirmed.

T. W. & W. Ry. Co. v. Maine, 67 Ill. 293.

**Mast of ship broke throwing mate to the deck.** Evidence showed that the defect complained of was twelve feet from where the mast broke. Evidence tended to show the accident was caused by a strong wind. Judgment \$450. Reversed—the verdict being against the evidence.

Gunderson v. Peterson, 65 Ill. 193.

**Ceiling of city hall fell.** Brick and plastering in council chamber fell striking plaintiff on head. Plaintiff was lawyer and lecturer and was so injured as to be unable to pursue his regular business. Evidence that he had a wife and seven daughters and two sons and supported them as a lecturer was



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admitted as evidence. Judgment \$950. Reversed because of evidence as to plaintiff's family.

*City of Chicago v. O'Brennan*, 65 Ill. 160.

**Setting aside default judgment.** Motion was made at the term to set aside. Court refused the motion. On appeal supreme court held should have been granted.

*Sonerbry v. Fisher*, 62 Ill. 135.

**Roof of city hall fell.** In course of construction. Plasterer in service of sub-contractor injured. Roof constructed independent contractor under an ordinance according to plans furnished by the city; but contractors ignored said plans and built by plans of their own. Board of public works had charge of the building. Discussion of city's liability. (60 Ill. 383, approved.) Judgment for plaintiff. Affirmed.

*City of Chicago v. Dermody*, 61 Ill. 431.

**Injured while leaving steamboat.** Boat was racing with another. Did not stop long enough at landing. Plaintiff attempted to jump after the plank had been raised. Judgment for plaintiff. Reversed for instruction on due care.

*Keokuk Packet Co. v. Henry*, 50 Ill. 285.

**Wall fell during high wind.** Action against owner on the theory that walls were defectively constructed. Wall fell upon plaintiff's house, killing his wife and injuring him. Building not yet finished—under a plan and contract. Architect to act as superintendent for the owner. Attention of owner had been called to fact that wall was leaning and apt to fall. Judgment for plaintiff. Reversed because of instruction for plaintiff as to knowledge by owner.

*Schwartz v. Gilmore*, 45 Ill. 455.

**Action against board of trustees of Illinois and Michigan canal for negligence.** No action lies. Should be against state trustee.

*Trustee, etc. v. Daft*, 48 Ill. 96.

**Building fell owing to negligent excavating.** Lady passing—wind blew her hat under the building. Clerk of store in building went under building to get the hat. It fell while he was there. Verdict directed for defendant. Reversed on ground plaintiff made out his case.

*Lamparter v. Wallbaum*, 45 Ill. 444.

**Lineman dropped telegraph wire.** It struck horse standing untied, which ran away and was killed. Judgment for plaintiff. Reversed for failure to show due care.

*W. U. T. Co. v. Quinn*, 56 Ill. 319.

**Canal boat ran into bridge.** Discussion of liability of master for negligence of his servants and of due diligence by master in discovering defect.

*Korah v. City of Ottawa*, 31 Ill. 121.

**Hammer fell off swinging stage** and struck pedestrian on street below, on the head. Windy day. Servant of independent contractor; contractor sued. Judgment \$500. Affirmed.

*Hunt v. Hoyt*, 20 Ill. 544.

**Stage coach overturned.** Passenger injured; arm broken; permanent injury. Judgment \$5,000. Remittitur \$2,200. Affirmed.

*Frink v. Schroyer*, 18 Ill. 416.

**Defective stage coach tipped over.** Passenger jumped and was injured. Those who remained inside were unhurt. Judgment \$3,604. Reversed and remanded because of instruction on duty of carriers.

*Frink v. Potter*, 17 Ill. 406.

**Horse fell into well on railroad property** and was killed. Question of contributory negligence raised for first time in Illinois. Judgment \$110. Reversed and remanded for refusal of instruction on contributory negligence.

*Aurora Branch R. R. Co. v. Grimes*, 13 Ill. 585.

**Injury due to fellow-servants.** No recovery—first case involving rule as to fellow-servants. Demurrer to declaration sustained. Affirmed.

*Honner v. I. C. R. R. Co.*, 15 Ill. 550.

**MOTION TO INSTRUCT FOR DEFENDANT.**

Properly denied when there is any evidence tending, with all reasonable inferences to be derived therefrom, to prove the material averments of plaintiff's case; such evidence being present when reasonable minds would differ as to the fact of its existence in the record.

Properly given where reasonable minds would agree there is no evidence, with the reasonable inferences to be derived from the case, tending to prove any material issue.

Libby, McNeill & Libby v. Cook, 222 Ill. 206.

Taylor Coal Co. v. Dawes, 220 Ill. 145.

Toledo P. & W. Ry. Co. v. Hammett, 220 Ill. 9.

C. J. Elec. Ry. Co. v. Patton, 220 Ill. 215.

Shoninger Co. v. Mann, 219 Ill. 242.

National E. & S. Co. v. McCorkle, 219 Ill. 557.

Parks v. Northwestern University, 218 Ill. 381.

C. C. Ry. Co. v. Henry, 218 Ill. 93.

C. & A. R. R. Co. v. Jennings, 217 Ill. 494.

Boyd, Admr., v. C. & N. W. Ry. Co., 217 Ill. 332.

B. & O. S. R. R. Co. v. Mullen, 217 Ill. 203.

Muren Coal & Ice Co. v. Howell, 217 Ill. 190.

Leighton, etc., Steel Co. v. Snell, 217 Ill. 152.

C. & A. R. R. Co. v. Walters, 217 Ill. 87.

Credibility of witnesses is not raised by.

C. C. Ry. Co. v. Henry, 218 Ill. 93.

C & A. R. R. Co. v. Jennings, 217 Ill. 494.

Weight of evidence is not raised by.

Toledo P. & W. Ry. Co. v. Hammett, 220 Ill. 9.

Shoninger v. Mann, 219 Ill. 242.

C. C. Ry. Co. v. Martensen, 198 Ill. 511.

Should be refused if evidence is conflicting.

Boyd, Admr., v. C. & N. W. Ry. Co., 217 Ill. 332.

Christy v. Elliott, 216 Ill. 31.

C. C. Ry. Co. v. Jordan, 215 Ill. 390.

Made at close of plaintiff's case but not reviewed at close of defendant's case, waived.

C. U. T. Co. v. O'Donnell, 211 Ill. 349.

P. C. C. & St. L. Ry. Co. v. Hewitt, 202 Ill. 28.

Not waived by subsequently asking instructions on the evidence.

C. T. T. R. R. Co. v. Schiavone, 216 Ill. 275.

I. C. R. R. Co. v. Swift, 213 Ill. 307.

Refusal of peremptory instruction raises question of law.

I. C. R. R. Co. v. Swift, 213 Ill. 307.

Given as one of regular series—of no force.

Properly denied—when.

Wells & French Co. v. Kapaczynski, 218 Ill. 149.

Boyd, Admr., v. C. & N. W. Ry. Co., 217 Ill. 332.

Hewes v. C. & E. I. R. R. Co., 217 Ill. 500.

Rowe, Admx., v. Taylorville Elec. Co. 213 Ill. 318.

O'Donnell, Admr., v. McVeagh et al., 205 Ill. 321

C. C. Ry. Co. v. Barker, Admr., 209 Ill. 321.

Village of Wilmette v. Brachle, 209 Ill. 621.

I. C. R. R. Co. v. Behrens, 208 Ill. 20.

Marquette Coal Co. v. Diclie, 208 Ill. 117.

Grace & Hyde Co. v. Probst, 208 Ill. 147.

C. & A. R. R. Co. v. Howell, 208 Ill. 155.

Barnett & Record Co. v. Schlapka, 208 Ill. 426.

C. & A. R. R. Co. v. Pulliam, 208 Ill. 456.

C. & E. I. R. R. Co. v. Driscoll, Admx., 207 Ill. 9.

Spring Valley Coal Co v. Robizas, 207 Ill. 226.

Riverton Coal Co. v. Shepherd, 207 Ill. 395.

Cobb Chocolate Co. v. Knudson, 207 Ill. 452.

Consolidated Coal Co. of St. Louis v. Fleischbein, Admr., 207 Ill. 593.

C. C. Ry. Co. v. McMeen, 206 Ill. 108.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Knickerbocker Ice Co. v. Benedix, 206 Ill. 362.

C. & A. R. R. Co. v. Wise, 206 Ill. 453.

P., C. C. & St. L. Co. v. Banfile, 206 Ill. 553.

Ehlen v. O'Donnell, Admr., 205 Ill. 38.

Momence Stone Co. v. Turrell, 205 Ill. 515.

P., C. C. & St. L. R. R. Co. v. Robson, 204 Ill. 254.

Muren Coal & Ice Co. v. Howell, Admr, 204 Ill. 515.

C. I. & L. Ry. Co. v. Barr, Admr., 204 Ill. 163.

Lake St. Elevated R. R. Co. v. Shaw, 203 Ill. 39.

Himrod Coal Co. v. Stevens, 203 Ill. 115.

Nelson v. Fehd, 203 Ill. 120.

Allen B. Wrisley Co. v. Burke, 203 Ill. 250.

C. & A. R. R. Co. v. Ralby, 203 Ill. 310.

Metcalf Co. v. Nystedt, 203 Ill. 333.

- P. C. C. & St. L. Ry. Co. v. Kinnare, Admr., 203 Ill. 388.**  
**N. C. St. Ry. Co. v. Rodert, 203 Ill. 413.**  
**Met. West Side Elevated Ry. Co. v. Fortin, 203 Ill. 454.**  
**Christy v. Elliott, 216 Ill. 31.**  
**C. C. Ry. Co. v. McCaughna, 216 Ill. 202.**  
**South Chicago City Ry. Co. v. Kinnare, Admr., 216 Ill. 451.**  
**Odin Coal Co. v. Tadlock, 216 Ill. 624.**  
**E. J & E. Ry. Co. v. Thomas, 215 Ill. 158.**  
**Franke v Hanley, 215 Ill. 216.**  
**Blakeslee Exp. & Van Co. v. Ford, Admx., 215 Ill. 230.**  
**C. U. T. Co. v. Lundahl, Admr., 215 Ill. 289.**  
**C. U. T. Co. v. Newmiller, 215 Ill. 383.**  
**C. C. Ry. Co. v. Jordan, Admr., 215 Ill. 390.**  
**C. C. Ry. Co. v. Nelson, 215 Ill. 436.**  
**Illinois 3d Vein Coal Co. v. Cloni, 215 Ill. 583.**  
**Madison Coal Co. v. Haye, 215 Ill. 625.**  
**C. & E. I. R. R. Co. v. Crose, 214 Ill. 602.**  
**Hansell-Elcock Foundry Co. v. Clark, 214 Ill. 399.**  
**The Chicago Terminal T. Ry. Co. v. O'Donnell, Admr., 213 Ill. 545.**  
**The Central Union Bldg. Co. v. Kolander, Admx., 212 Ill. 27.**  
**Chicago & Alton R. R. Co. v. Vipond, Admr., 212 Ill. 199.**  
**Shickle-Harrison & H. Iron Co. v. Beck, 212 Ill. 268.**  
**Chicago & W. I. R. Co. v. Newell, 212 Ill. 332.**  
**I. I. & I. R. R. Co. v. Otstot, 212 Ill. 429.**  
**C. C. Ry. Co. v. Lannon, 212 Ill. 477.**  
**C. & E. I. R. R. Co. v. Burrledge, 211 Ill. 9.**  
**Henrietta Coal Co. v. Campbell, 211 Ill. 216.**  
**C. & E. I. R. R. Co. v. Schunts, 211 Ill. 446.**  
**C. U. T. Co. v. O'Donnell, Admr., 211 Ill. 349.**  
**Illinois Central R. R. Co. v. Puckett, Admx., 210 Ill. 140.**  
**Rock Island S. & D. Works, v. Pohlman, 210 Ill. 133.**  
**E. St. L. Connecting Ry. Co. v. Altgen, 210 Ill. 213.**  
**Garibaldi & Cuneo v. O'Connor, 210 Ill. 284.**  
**Ill. So. Ry. Co. v. Marshall, Admr., 210 Ill. 562.**  
**Illinois Central R. R. Co. v. Sheffner, 209 Ill. 9.**  
**C. & A. R. R. Co. v. Bell, 209 Ill. 25.**  
**C. & E. I. R. R. Co. v. White, Admr., 209 Ill. 124.**

**Question raised by.**

- McCormick Harvesting Mch. Co. v. Zakzewski, 220 Ill. 522.**  
**Toledo P. & W. Ry. Co. v. Hammett, 220 Ill. 9.**  
**C. J. Elec. Ry. Co. v. Patton, 219 Ill. 215.**  
**C. & A. R. R. Co. v. Walker, 217 Ill. 605.**  
**C. C. Ry. Co. v. Caughna, 216 Ill. 202.**  
**C. U. T. Co. v. Newmiller, 215 Ill. 383.**

- C. U. T. Co. v. Lundahl, Admr., 215 Ill. 289.**  
**Blakeslee Exp. & Van Co. v. Ford, Admx., 215 Ill. 280.**  
**Illinois 3d Vein Coal Co. v. Cioni, 215 Ill. 583.**  
**C. & E. I. R. R. Co. v. Heerey, Admr., 203 Ill. 492.**  
**Chicago Junction Ry. Co. v. McGrath, 203 Ill. 511.**  
**Economy L. P. Co. et al. v. Hiller, 503 Ill. 518.**  
**Chicago Screw Co. v. Weiss, 203 Ill. 536.**  
**Chicago Hair & Bristle Co. v. Mueller, 203 Ill. 558.**  
**C. C. C. & St. L. Ry. Co. v. Hornsby, 202 Ill. 138.**  
**Armour v. Golkowska, 202 Ill. 144.**  
**Hartrich et al. v. Hawes, 202 Ill. 334.**  
**I. C. R. R. Co. v. Elchér, Admx., 202 Ill. 556.**  
**C. C. Ry. Co. v. Loomis, 201 Ill. 118.**  
**Illinois Steel Co. v. Delac, 201 Ill. 150.**  
**I. D. & W. Ry. Co. v. Fowler, 201 Ill. 152.**  
**Springfield C. Ry. Co. et al. v. Puntenny, 200 Ill. 9.**  
**Sinclair Co. v. Waddill, 200 Ill. 17.**  
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**Nelson Morris Co. v. Malone, Admx., 200 Ill. 132.**  
**City of Elgin v. Nofs, 200 Ill. 252.**  
**Illinois Steel Co. v. Ryska, 200 Ill. 280.**  
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**Economy L. & P. Co. v. Sheridan, Admr., 200 Ill. 439.**  
**Illinois Steel Co. v. Olste, 214 Ill. 181.**  
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**C. & A. R. R. Co. v. Howell, 208 Ill. 151.**  
**Consolidated Coal Co. of St. L. v. Fleischbein, Admr., 207 Ill. 593.**  
**Missouri Mall. Iron Co. v. Dillon, 206 Ill. 145.**  
**P. C. C. & St. L. R. R. Co. v. Robson, 204 Ill. 254.**  
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**Metcalf Co. v. Nystedt, 203 Ill. 333 (Rules).**  
**P. C. C. & St. L. Ry. Co. v. Kinnare, Admr., 203 Ill. 388.**  
**Met. West Side Elevated Ry. Co. v. Fortin, 203 Ill. 454.**  
**Chicago Junction Ry. Co. v. McGrath, 203 Ill. 511.**  
**C. C. C. & St. L. Ry. Co. v. Hornsby, 202 Ill. 138.**  
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**I. I. & I. R. R. Co. v. Otstot, 212 Ill. 429.**  
**Illinois Central R. R. Co. v. Keegan, 210 Ill. 150.**  
**Illinois Central R. R. Co. v. Sheffner, 209 Ill. 9.**  
**C. & A. R. R. Co. v. Bell, 209 Ill. 25.**  
**C. & E. I. R. R. Co. v. White, Admr., 209 Ill. 124.**  
**C. C. Ry. Co. v. Barker, Admr., 209 Ill. 321.**  
**I. C. R. R. Co. v. Behrens, 208 Ill. 20.**

**412      MOTION TO INSTRUCT FOR DEFENDANT.**

**Admits evidence of plaintiff is true.**

**C. C. Ry. Co. v. Lannon, 212 Ill. 477.**

**Missouri Mall. Iron Co. v. Dillon, 206 Ill. 145.**

**Should not have been given.**

**Henrietta Coal Co. v. Campbell, 211 Ill. 216.**

**Should have been given.**

**Lockport, Village of v. Licht, 221 Ill. 35.**

**McCormick Harvesting Mch. Co. v. Zakzewski, 220 Ill. 522.**

**Burke v. Hulerr, Admr., 216 Ill. 545.**

**Chicago T T. R. R. Co. v. Schiavone, Admr., 216 Ill. 275.**

**Cullen v. Higgins, 216 Ill. 78.**

**C. R. I. & P. R. R. Co. v. Hamler, 215 Ill. 525.**

**Condon v. Schoenfeld, 214 Ill. 226.**

**South Side Elevated Ry. Co. v. Nesirg, 214 Ill. 463.**

**The Gunning System v. Lapointe, 212 Ill. 274.**

**C. & A. R. R. Co. v. Bell, 209 Ill. 25.**

**C. C. Ry. Co. v. Leach, 208 Ill. 198.**

**Illinois Steel Co. v. Coffey, 205 Ill. 206.**

**Webster Mfg. Co. v. Nisbett, 205 Ill. 273.**

**N. C. St. Ry. Co. v. Cossar, 203 Ill. 608.**

**Swift & Co. v. Ronan, 202 Ill. 202.**

**Anderson v. W. C. St. R. R. Co., 200 Ill. 329.**

**NEGLIGENCE.**

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Negligence consists in acting or failing to act in such manner, that a duty imposed by law or reason upon the person acting, is neglected or not performed in such manner as reasonable minds would agree it should be performed under the conditions shown by the evidence.

**a. In General.**

Evidence of same negligence as that causing injury, by same servant at prior times—held competent. Exception to rule that past acts cannot be shown.

Taylor Coal Co. v. Dawes, 220 Ill. 145.



Of private citizen in displaying goods on public sidewalk.

Garibaldi & Cuneo v. O'Connor, 210 Ill. 284.

Of sub-contractor of terra cotta work—contractor not liable for negligence of.

Pioneer Fireproof Con. Co. v. Howell, 189 Ill. 123.

Not related to the injury cannot be shown.

Sugar Creek Mining Co. v. Peterson, 177 Ill. 324.

Of defendants is never presumed but must be proved.

C. C. Ry. Co. v. Rood, 163 Ill. 477.

Where injury results partly from accident—defendant held.

Norton v. Volzke, 158 Ill. 403.

Is never presumed from the fact of injury.

Hart v. Washington Park Club, 157 Ill. 9.

Rules as to—when recovery because of.

Wenona Coal Co. v. Holmquist, 152 Ill. 581.

Of third persons is not a material element in any case.

L. Wolff Mfg. Co. v. Wilson, 152 Ill. 9.

Of defendant defined—elements of—shown.

L. Wolff Mfg. Co. v. Wilson, 152 Ill. 9.

Is not actionable unless some duty owed by defendant to plaintiff is neglected.

Gibson v. Leonard, 143 Ill. 184.

Must be toward one to whom a duty is owed.

Williams v. C. & A. R. R. Co., 135 Ill. 491

Of parent—when material where child is injured.

C. W. D. Ry. Co. v. Ryan, 131 Ill. 474.

General rule as to recovery for.

C. St. L. & P. Ry. Co. v. Hutchinson, 120 Ill. 587.

City not liable for injury due to negligence of fireman in discharge of his duty.

Willcox v. City of Chicago, 107 Ill. 334.

**b. Pleadings as to.**

(See PLEADINGS.)

Must be proved as charged in the declaration.

Ebsery v. C. C. Ry. Co., 164 Ill. 518.

How should be averred.

C. C. Ry. Co. v. Jennings, 157 Ill. 274.

**c. Practice as to.**

(See also PRACTICE.)

Should be submitted to the jury where dependent on credibility of witnesses or weight of evidence.

U. S. W. E. & P. Co. v. Butcher, 223 Ill. 638.

Burden of proof to show is on plaintiff.

Sack v. Dolese, 137 Ill. 129.

**d. When a Question of Fact.**

Is a question of fact where the evidence as to is conflicting.

Parmalee Co. v. Wheelock, 224 Ill. 194.

Failing to ring bell at crossing—for jury.

C. & A. R. R. Co. v. Corson, Admr., 198 Ill. 98.

Of defendant is fact for jury—when.

McGregor v. Reid, Murdoch & Co., 178 Ill. 464.

When not a question of law.

T. H. & I. Ry. Co. v. Voelker, 129 Ill. 541.

When a question of fact.

C. & N. W. Ry. Co. v. Hansen, 166 Ill. 623.

When question of fact for jury—grass on right of way obstructed view of crossing.

C. & A. R. R. Co. v. Sanders, 154 Ill. 532.

Placing pole too near track—fact for jury.

N. C. St. Ry. Co. v. Williams, 140 Ill. 275.

Question of fact for jury.

I. C. R. R. Co. v. Slater, 139 Ill. 190.

City of Chicago v. Moore, 139 Ill. 201.

When question of fact.

I. & St. L. Ry. Co. v. Morgenstein, 106 Ill. 216.

### **e. When a Question of Law.**

When a question of law.

Hoehn v. C., P. & St. L. Ry. Co., 152 Ill. 224.

I. C. R. R. Co. v. Larson, 152 Ill. 326.

L. S. & M. S. Ry. Co. v. Ouska, 151 Ill. 232.

When a question of law.

C. C. Ry. Co. v. Robinson, 127 Ill. 9.

### **f. Must Be Proximate Cause.**

(See also PROXIMATE CAUSE.)

When defendant's is shown not to be proximate cause of injury—horse ran away.

Wabash R. R. Co. v. Billings, 212 Ill. 37.

Must be shown to be proximate cause.

L. S. & M. S. Ry. Co. v. Parker, 131 Ill. 557.

May be proximate cause of injury though not the sole cause or immediate cause.

American Express Co. v. Risley, 179 Ill. 295.

### **g. Gross Negligence—What is.**

Gross—held shown in "kicking" car over crossing in night time without lights or brakeman.

C. & A. R. R. Co. v. O'Neill, 172 Ill. 527.

Gross, defined—train jumped track.

J. S. & E. Ry. Co. v. Southworth, 135 Ill. 250.

Slight and gross defined.

P. C. & St. L. Ry. Co. v. McGrath, 115 Ill. 172.

Gross negligence defined.

Rolling Mill Co. v. Johnson, 114 Ill. 59.

Gross—facts showing—defective locomotive.

C. & E. I. Ry. Co. v. Rung, 104 Ill. 641.

Gross negligence held shown.

C., B. & Q. R. R. Co. v. Cauffman, 38 Ill. 425.

Gross negligence in permitting freight train to pass too close to passenger train—shown.

C. & A. R. R. Co. v. Pondrom, 51 Ill. 333.

Gross—failure to signal at crossing—not shown.

C., B. & Q. R. R. Co. v. Harwood, 90 Ill. 425.

Gross negligence shown—running train through a town at prohibited speed.

C. & A. R. R. Co. v. Becker, 84 Ill. 483.

### Miscellaneous cases.

(See also MISCELLANEOUS CASES.)

Of physician—performing operation without consent of patient—liable for results—when consent unnecessary.

Pratt v. Davis, 224 Ill. 300.

In selling packed mince meat that poisoned consumer—shown—actionable.

Salmon, Exrx., v. Libby, McNeil & Libby, 219 Ill. 421.

Piling lumber in street—child injured—held negligence per se.

True & True Co. v. Woda, Admx., 201 Ill. 315.

Of landlord in not disclosing to tenant the presence of sewer gas. Sickness caused—recovery.

Sunasack v. Morcy, 196 Ill. 569.

In failing to provide sufficient number of fire-escapes—shown.

Landgraf v. Kuh, 188 Ill. 484.

In not properly fastening smoke stack which fell—shown owner held.

Boyce v. Talleman, 183 Ill. 115.

In construction of bridge—shown—no guard.

St. Louis Bridge Co. v. Miller, 138 Ill. 465.

Of defendant's driver running into another wagon—shown master liable.

Christian v. Irwin, 125 Ill. 619.

#### **h. By City.**

(See also DEFECTIVE SIDEWALKS—DEFECTIVE STREETS.)

Of city in permitting defective street—excavations filled in, sunk, leaving holes.

City of Aurora v. Scott, 185 Ill. 539.

Making and leaving premises dangerous and attractive to children, is—pit left full of water—child drowned.

City of Pekin v. McMahon, 154 Ill. 141.

Of city—gravel pile in street—shown.

City of Aurora v. Rockabrand, 149 Ill. 399.

Failure to keep sidewalk in safe condition—shown.

Town of Wheaton v. Hadley, 131 Ill. 640.

City left ditch five feet deep filled with water in public street without guard, child drowned.

City of Chicago v. Hessing, 83 Ill. 204.

Of defendant—when basis for recovery—defective sidewalk.

Village of Mansfield v. Moore, 124 Ill. 133.

Leaving excavation in sidewalk unguarded—shown.

Hutchinson v. Collins, 90 Ill. 410.

Negligence of city in leaving dead animal in street—shown.

City of Chicago v. Hoy, 75 Ill. 530.

Negligence of city in failing to guard open draw bridge in night time—shown.

City of Chicago v. Wright, 68 Ill. 586.

### i. By Mine Owner.

(See also MINE ACCIDENTS.)

Held shown—injury due to defective circulation in mine.

Wilmington & S. Coal Co. v. Sloan, 225 Ill. 467.

Failure to furnish props—Mine Act—shown.

Kellyville Coal Co. v. Strine, 217 Ill. 516.

Failure to repair mine roof—shown.

C. W. & V. Coal Co. v. Moran, 210 Ill. 9.

In carelessly placing props in mine—shown.

Consolidated Coal Co. v. Lundak, 196 Ill. 594.

Of mine owner—failure to fence shaft—shown.

Catlett v. Young, 143 Ill. 74.

### j. By Master.

(See also MASTER AND SERVANT CASES.)

Carelessly running traveling crane—shown.

Leighton, etc. Coal Co. v. Spell, 217 Ill. 152.

In carelessly running machinery—shown.

Spring Valley Coal Co. v. Buzis, 213 Ill. 341.

In failing to repair defective rope—shown.

Ill. Steel Co. v. Wierzbicky, 206 Ill. 201.

Of foreman in ordering removal of "bosh plate" of furnace too soon—shown.

Ill. Steel Co. v. Delac, 201 Ill. 150.

In failing to keep apparatus for hoisting coal out of ship in repair—shown.

Ill. Steel Co. v. Ostrowsky, 194 Ill. 376.

Failure to supply sufficient help to do work with safety held to be.

Supply v. Agnew, 191 Ill. 439.

Failing to furnish sufficient light—packing house—shown.

Swift & Co. v. O'Neill, 187 Ill. 337.

In failing to guard cogwheels—shown.

Norton v. Volzke, 158 Ill. 403.

Of incompetent servant—engineer of boat—shown.

Western Stone Co. v. Whalen, 151 Ill. 473.

In failing to supply safe appliances—shown.

Pullman Palace Car Co. v. Laack, 143 Ill. 243.

In having incompetent servant—what is.

Consolidated Coal Co. v. Maehl, 130 Ill. 551.

### **k. By Street Railway Company.**

(See also STREET RAILWAY ACCIDENTS.)

Of motorman in colliding with wagon—shown.

C. C. T. Co. v. Schritter, 222 Ill. 364.

In running street car across railroad tracks—collision—shown.

C. C. Ry. Co. v. Shaw, 220 Ill. 532.

In starting car before passenger has alighted—shown.

W. C. St. Ry. Co. v. McCafferty, 220 Ill. 476.

Of "barn boss" of street car barn—shown.

C. U. T. Co. v. Sawusch, 218 Ill. 130.

Of defendant in "not making timely efforts to stop" car—shown.

C. C. Ry. Co. v. Schmidt, 217 Ill. 396.

In placing street car tracks in street so as to be dangerous—shown.

South Side Elevated Ry. Co. v. Nesvig, 214 Ill. 463.

Running into wagon on viaduct—street car—shown.

C. C. Ry. Co. v. Bennett, 214 Ill. 26.

Of motorman losing control of car—shown.

C. C. Ry. Co. v. Barker, Admr., 209 Ill. 321.

Of driver of wagon colliding with street car.

Knickerbocker Ice Co. v. Benedix, 206 Ill. 362.

Of conductor collecting fares going through dangerous tunnel.

N. C. St. Ry. Co. v. Polkey, Admr., 203 Ill. 225.

Of conductor allowing passenger to ride on foot-board of car—shown.

N. C. St. Ry. Co. v. Polkey, Admr., 203 Ill. 225.

Motorman's negligence—shown.

N. C. St. Ry. Co. v. Irwin, Exrx., 202 Ill. 345.

In failing to put guards between cars of elevated railway—passenger fell between.

Lake St. "L" Ry. Co. v. Burgess, 200 Ill. 628.

Running street car at night without head light.

C. C. Ry. Co. v. Fennimore, 199 Ill. 9.

Of street car company in running down child at crossing—shown.

C. C. Ry. Co. v. Tuohy, 196 Ill. 410.

Of motorman—running into wagon crossing street car track—shown.

C. C. Ry. Co. v. Olls, Admx., 192 Ill. 514.

In backing street car after passing, striking wagon crossing behind car—shown.

Central Railway Co. v. Knowles, 191 Ill. 241.

Of defendant—held shown—street car collided with wagon.

W. C. St. Ry. Co. v. Carr, 170 Ill. 478.

In failing to stop car in time to prevent collision—shown.

C. C. Ry. Co. v. McLaughlin, 146 Ill. 353.



### 1. By Railroad Company.

(See also RAILROAD ACCIDENTS.)

Of foreman in placing stake on flat car upon which rails were being loaded, causing rail to slide back upon workman.

C., R. I. & P. Ry. Co. v. Rathmean, 225 Ill. 278.

In failing to cover up or guard semaphore wires—brakeman stumbled over.

C. & E. I. R. R. Co. v. Snedaker, 223 Ill. 895.

In “kicking back” car in railroad yards—shown.

P. C. C. & St. L. Ry. Co. v. Bovard, Admr., 223 Ill. 176.

In failing to ring bell at railroad crossing—shown.

Elgin, J. & E. Ry. Co. v. Hoadley, 220 Ill. 463.

In carelessly loading lumber on train—shown.

C. & E. I. R. R. Co. v. Reilly, 212 Ill. 506.

In running locomotive—shown.

I., I. & I. R. R. Co. v. Otstol, 212 Ill. 429.

Failure to ring bell at railroad crossing.

C. & E. I. R. R. Co. v. Schmitz, 211 Ill. 446.

Allowing pole to remain too near track.

Ill. T. R. R. Co. v. Thompson, 210 Ill. 226.

In placing switch stand too near track—brakeman ran against.

C. & A. R. R. Co. v. Howell, 208 Ill. 155.

Failure to repair engine—shown.

I. C. R. R. Co. v. Behrens, 208 Ill. 20.

Of defendant in failing to hold train while passenger bought ticket, as agreed—shown.

C. & A. R. R. Co. v. Flaherty, 202 Ill. 151.

Allowing obstructions on depot platform—shown.

I. C. R. R. Co. v. Hopkins, 200 Ill. 122.

Of engineer in running down trespasser who had fallen unconscious on track—shown.

*Martin v. C. & N. W. Ry. Co.*, 194 Ill. 138.

Of railroad company in allowing cinders to be piled at crossing, horse frightened.

*I. C. R. R. Co. v. Griffin*, 184 Ill. 9.

**m. Negligence—Held Shown.**

In failing to keep coupling apparatus in repair—shown.

*C. & E. I. R. R. Co. v. Knapp*, 176 Ill. 127.

Of railroad company in failing to supply sufficient cars for excursion—shown.

*C. & A. R. R. Co. v. Dumser*, 161 Ill. 191.

In failing to give signal at railroad crossing—shown—child two years old killed.

*C. & A. R. R. Co. v. Logue*, 158 Ill. 621.

Of railroad company—allowing pile of ashes and cinders in street—shown.

*C. & A. R. Co. v. Nelson*, 153 Ill. 89.

Of railroad company in failing to repair brake on box car—shown.

*C. & E. I. R. R. Co. v. Kneirim*, 152 Ill. 438.

In failing to fence railroad track—shown.

*A. T. & S. F. R. R. Co. v. Elder*, 149 Ill. 173.

In constructing crossing over tracks—shown.

*E. J. & E. Ry. Co. v. Raymond*, 148 Ill. 242.

In constructing bridge too low—brakeman knocked off car.

*C. C. C. & St. L. Ry. Co. v. Walter*, 147 Ill. 69.

In starting train after having stopped to let passengers off—shown.

*C. & A. R. R. Co. v. Arnol*, 144 Ill. 261.

Of defendant shown—crossing accident.

*L. S. & M. S. Ry. Co. v. Bodemer*, 139 Ill. 597.

Failure to give signal approaching crossing—statute construed.

*L. S. & M. S. Ry. Co. v. Johnson*, 135 Ill. 641.

In failing to stop long enough at station.

*McNulta v. Ensach*, 134 Ill. 47.

Failure to have flagman at crossing—shown.

*C. & I. R. R. Co. v. Lane*, 130 Ill. 117.

Failure to give signal at crossing—shown.

*I. C. R. R. Co. v. Slater*, 129 Ill. 91.

In making “fly switch”—shown.

*C. & A. R. R. Co. v. Kelly*, 127 Ill. 638.

In ordering child seven years old off moving train—shown.

*C., M. & St. P. Ry. Co. v. West*, 125 Ill. 320.

Of foreman in giving order—shown.

*W. St. L. & P. Ry. Co. v. Hawk*, 121 Ill. 259.

Of flagman in giving signal to cross—shown.

*Pennsylvania Co. v. Sloan*, 125 Ill. 72.

Defendant's negligence shown in allowing brush to obstruct view of track.

*Dimick, Admr., v. C. & N. W. Ry. Co.*, 80 Ill. 338.

Putting a car in motion without the ability to stop it held to be negligence.

*Noble v. Cunningham*, 74 Ill. 51.

When servant may recover for negligence of master in not removing temporary danger.

*Fairbank v. Haentzsche*, 73 Ill. 236.

Negligence in constructing building on fair grounds shown.

*Latham et al. v. Roach*, 72 Ill. 179.

Negligence of railroad company in approaching crossing shown—ordinary care by plaintiff crossing tracks shown.

*C. & N. W. Ry. Co. v. Ryan*, 70 Ill. 211.

Railroad company is liable for actual damages proven where it carries passenger by station for which he has purchased ticket.

*C., R. I. & P. Ry. Co. v. Fisher*, 66 Ill. 152.

Employe of tenant injured by negligence of landlord—landlord held.

*Lamparter v. Wallbaum*, 45 Ill. 444.

Incompetence of engineer—shown.

*I. C. R. R. Co. v. Jewell*, 46 Ill. 99.

Ejecting passenger at place not regular station. Railroad company liable.

*C. & A. R. R. Co. v. Roberts*, 40 Ill. 503.

Negligence of engineer—running into wagon stalled on crossing—shown.

*C. & A. R. R. Co. v. Hogarth*, 38 Ill. 371.

Negligence of engineer approaching crossing—shown.

*C., B. & Q. R. R. Co. v. Triplett*, 38 Ill. 484.

Failure to stop train—held negligence.

*C., B. & Q. R. R. Co. v. Cauffman*, 38 Ill. 425.

Negligence shown—grain wagon ran into buggy.

*Coursen v. Ely*, 37 Ill. 338.

Negligence of physician—shown.

*Ritchey v. West*, 23 Ill. 329.

Rule as to when defendant's negligence is shown discussed.

*Frink v. Potter*, 17 Ill. 406.

#### **n. Negligence Held Not Shown.**

##### **Miscellaneous.**

Of railroad company in leaving clay pile near track attractive to children, is not proximate cause of death where child slipped while touching the cars as they passed.

*Seymour v. Union S. & T. Co.*, 224 Ill. 579.

Of defendant not shown—alighting from train.

Harvey v. C. & A. R. R. Co., 221 Ill. 242.

Of electric light company in placing poles so as to be dangerous—not shown.

South Side Elevated Ry. Co. v. Nesvig, 214 Ill. 463.

Of foreman in turning on power and injuring servant.

Baier v. Selke, 211 Ill. 512.

Of defendant not shown—dirt piled on side of street.

Village of Lockport v. Licht, 221 Ill. 35.

Of defendant—not shown.

Trakal v. Huesner Baking Co., 204 Ill. 179.

Failure of conductor of street car to stop on signal of pedestrian—held not to be.

S. C. C. Ry. Co. v. Dufresne, 200 Ill. 456.

In allowing passenger to get off at unusual place—held not to be.

S. C. C. Ry. Co. v. Dufresne, 200 Ill. 456.

Of defendant in failing to place fence around a stone quarry—not shown—employee fell into.

Earnshaw v. Western Stone Co., 200 Ill. 220.

What is not, in running over railroad crossing.

St. Louis Nat. Stock Yards v. Godfrey, 198 Ill. 288.

Negligence in employing incompetent servant—not shown—helper on circular saw.

Pagels v. Meyer, 193 Ill. 172.

Of city—safe being moved fell through sidewalk—not shown.

Kohlhof v. City of Chicago, 192 Ill. 249.

Of railroad company in obstructing view at crossing—not shown.

C. & A. R. R. Co. v. Pearson, Admx., 184 Ill. 386.

Not shown where engineer failed to whistle where a bridge crossed highway—the statute requiring signal only at crossing at grade.

C. C. C. & St. L. Ry. Co. v. Halbert, 179 Ill. 196.

In failing to provide props in mine—not shown.

Sugar Creek Mining Co. v. Peterson, 177 Ill. 324.

Master's own not presumed from fact that bank caved in.

Alton Paving Co. v. Hudson, 176 Ill. 270.

Of defendant not shown—servant was lowering tank down stairs—fell upon him.

Karr Supply Co. v. Kroenig, 167 Ill. 560.

Of defendant not shown—hanging tongues on hook—finger caught on hook.

Ryan v. Armour, 166 Ill. 568.

Of defendant not shown where plaintiff ate oysters in restaurant and was poisoned.

Sheffer v. Willoughby, 163 Ill. 518.

Of engineer in blowing danger whistle—not shown—passenger jumped off, and was struck by another train.

C., R. I. & P. Ry. Co. v. Felton, 125 Ill. 458.

### **o. As to Inspection.**

(See also INSPECTION.)

Failure to inspect and mark mine wall—shown.

Kellyville Coal Co. v. Strine, 217 Ill. 516.

Failure to inspect, shown.

Momence Stone Co. v. Turrell, 205 Ill. 515.

### **Failure to provide safe place, machinery, etc.**

(See also SAFE PLACE TO WORK.)

Failure to provide safe place to work—shown—mine accident—trackway obstructed.

Muren Coal & Ice Co. v. Howell, 217 Ill. 190.

In failing to provide safe place to work. Employee caught in unprotected shafting.

Nelson Morris & Co. v. Malone, Admx., 200 Ill. 132.

In failing to provide safe place for passengers to alight shown.

*C. T. T. R. R. Co. v. Schmelling*, 197 Ill. 619.

In failing to provide safe place to work—mine wall fell over upon miner.

*Consolidated Coal Co. v. Gruber*, 188 Ill. 584.

In failing to provide safe place—unballasted tracks in switching yards—shown.

*L. E. & W. R. R. Co. v. Morrissey*, 177 Ill. 376.

Failure to provide safe premises—shown—hole between ties of track—brakeman stumbled.

*I. C. R. R. Co. v. Sanders*, 166 Ill. 270.

In failing to provide safe machinery—shown—defective nut on clay mixing machine.

*Monmouth M. & M. Co. v. Erling*, 148 Ill. 521.

### **p. Of Parent—Child Injured.**

(See also CONTRIBUTORY NEGLIGENCE.)

Of parent not imputable to child.

*Richardson v. Nelson*, 221 Ill. 254.

Of parent is attributed to child where parent sued to recover for death of child.

*C. & A. R. R. Co. v. Logue*, 158 Ill. 621.

Of parent—child six years old struck by train at crossing—not shown.

*E. J. & E. Ry. Co. v. Raymond*, 148 Ill. 242.

Of parent—when not imputed to child.

*C. C. Ry. Co. v. Wilcox*, 138 Ill. 370.

Of parent—immaterial if child not guilty of contributory negligence.

*C. C. Ry. Co. v. Robinson*, 127 Ill. 9.

Of parent in permitting child in street—not shown.

Stafford v. Rubens, 115 Ill. 196.

Of parent—facts not showing—child four years old.

Gavin v. City of Chicago, 97 Ill. 66.

Parents negligence shown—child killed by engine.

C. W. & W. Ry. Co. v. Grable, 88 Ill. 441.

Negligence of person in charge of child—when imputable to the child—getting on passenger train while in motion—held contributory negligence.

O. & M. Ry. Co. v. Stratton, 78 Ill. 88.

Negligence of parents not shown.

C. & A. R. R. Co. v. Becker, 84 Ill. 483.

Negligence of parents in failing to watch child not shown.

City of Chicago v. Hessing, 83 Ill. 204.

Parent's negligence—not shown.

C. & A. R. R. Co. v. Gregory, 58 Ill. 226.

Parent's negligence in allowing child in street—not shown.

P., Ft. W. & C. Ry. Co. v. Bumstead, 48 Ill. 221.

Parents' negligence in care of child—shown.

City of Chicago v. Starr, 42 Ill. 174.

Parents negligence—fact for jury—not shown.

City of Chicago v. Major, 18 Ill. 349.

### q. Willful and Wanton.

(See also TRESPASSERS.)

Willful failure to comply with statute—shown though an effort is made to comply.

Eldorado Coal Co. v. Swan, 227 Ill. 586.

Willful and wanton—evidence held not sufficient to show.

C. C. Ry. Co. v. Jordan, 215 Ill. 390.



Of conductor forcing trespasser to jump off moving car, actionable.

C. C. Ry. Co. v. O'Donnell, 207 Ill. 478.

Willful and wanton held shown.

Chicago T. R. R. Co. v. Gruss, 200 Ill. 195.

I. C. R. R. Co. v. Leiner, 202 Ill. 624.

Willful and wanton not shown—trespasser on right of way run down.

James v. I. C. R. R. Co., 195 Ill. 327.

Willful and wanton—held evidence tends to prove—engine ran into “break down” on track.

E. J. & E. Ry. Co. v. Duffy, 191 Ill. 489.

Willful and wanton—when evidence tends to support.

B. & O. S. Ry. Co. v. Keck, 185 Ill. 400.

Odin Coal Co. v. Denman, 185 Ill. 413.

Willful and wanton by brakeman in throwing trespasser off car, foot cut off—recovery.

I. C. R. R. Co. v. King, 179 Ill. 91.

Willful and wanton—whether certain acts are is for jury—failure to ring bell or sound whistle.

C., B. & Q. Ry. Co. v. Murowski, 179 Ill. 77.

In putting trespasser off train is not actionable unless willful and wanton.

Wabash R. R. Co. v. Kingsley, 177 Ill. 558.

Willful and wanton held shown—run down in street.

E. St. L. C. Ry. Co. v. O'Hara, 150 Ill. 580.

Willful and wanton—evidence of.

L. S. & M. S. Ry. Co. v. Bodemer, 139 Ill. 597.

Willful—ejecting passenger from street car—shown.

N. C. St. Ry. Co. v. Gastka, 128 Ill. 618.

Willful by conductor of train not excused by contributory negligence.

W. St. L. & P. Ry. Co. v. Rector, 104 Ill. 296.

**Willful—when running train at high speed is.**

*Wabash Ry. Co. v. Henks*, 91 Ill. 406.

**Willful negligence shown—blowing whistle at railroad crossing frightening horse.**

*C. B. & Q. R. R. Co. v. Dickson*, 88 Ill. 431.

**What is—not a sufficient showing of willful negligence.**

*I. C. R. R. Co. v. Hetherington*, 83 Ill. 510.

**Railroad company is liable for the willful blowing of whistle by engineer—horse frightened.**

*C. B. & Q. R. R. Co. v. Dickson*, 63 Ill. 151.

**When master liable for willful act of servant.**

*T. W. & W. R. R. Co. v. Hannon*, 47 Ill. 298.

**Willful negligence defined.**

*Peoria Bridge Ass'n. v. Loomis*, 20 Ill. 236.

### **r. Negligence—Joint.**

**Of master and another servant—rule.**

**Joint negligence—where injury is due to act of fellow-servant, but the foreman knew or by the exercise of due diligence should have known of the danger the master is liable.**

*Deering v. Barzak*, 227 Ill. 71.

**Joint—of master and a fellow-servant—master held.**

*Schillinger Bros. Co. v. Smith*, 225 Ill. 74.

**Joint—of master and fellow-servant—master liable.**

*C. & E. I. R. R. Co. Kimmel*, 221 Ill. 547.

**Joint of master and servant—defective trolley car and negligence of motorman.**

*C. U. T. Co. v. Sawusch*, 218 Ill. 130.

**Boy injured on defective elevator—scuffling with messenger boy of defendant.**

*Siegel, Cooper & Co. v. Trcka*, 218 Ill. 559.

**Joint—of master and fellow servant—master liable.**

*C. & A. R. R. Co. v. Bell*, 209 Ill. 25.

**Joint—of master and fellow servant—master held.**

*Missouri Mall. Iron Co. v. Dillon*, 206 Ill. 145.

*Armour v. Colkowska*, 202 Ill. 144.

*C. & A. R. R. Co. v. Wise*, 206 Ill. 453.

**Joint of master and servant—master liable.**

*Ide v. Fletcher*, 194 Ill. 552.

**Joint—of master and servant—master held.**

*C. & N. W. Ry. Co. v. Gillison*, 173 Ill. 264.

**Joint—of master and servant—master liable.**

*C. & A. R. R. Co. v. House*, 172 Ill. 601.

**Of master and third person—rule.**

**Joint of defendant and another—defendant liable.**

*Christy v. Elliott*, 216 Ill. 31.

**That negligence of a third person contributed to the injury does not excuse defendant.**

*C. U. T. Co. v. Leach*, 215 Ill. 184.

**Joint of master and third person—master held—elevator fell—city officers.**

*McGregor v. Reid, Murdoch & Co.*, 178 Ill. 464.

**Combined of master and third party—master liable.**

*Pullman Palace Car Co. v. Laack*, 143 Ill. 243.

**By street railway company and another.**

**Joint—of motorman and cab driver—passenger in cab injured. Street car company liable.**

*Springfield C. Ry. Co. v. Puntenny*, 200 Ill. 9.

**Joint of engineer of locomotive and motorman of street car, collision at crossing—both liable.**

*C. & E. I. R. R. Co. v. Mochell*, 193 Ill. 208.

Of street car crew in allowing car to break through gates, does not excuse railroad company where collision was proximately caused by high speed of train.

C. & E. I. R. R. Co. v. Hines, 183 Ill. 482

Joint two street car companies—question of fact.

W. C. St. Ry. Co. v. Cahill, 165 Ill. 496.

**Miscellaneous.**

Of plaintiff's employer (an independent contractor) no excuse for defendants—when.

Siegel, Cooper & Co. v. Norton, 209 Ill. 201.

Joint—held shown.

Economy L. & P. Co. v. Hiller, 203 Ill. 518.

Joint of two railroad companies—open switch—both may be held for damages.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9.

Joint of Gas Company and Construction Company—connecting gas mains—Gas Company held for injury to employe of Construction Company.

Chicago Economic Gas Co. v. Myers, 168 Ill. 139.

Joint—contractor and owner, liability.

Consolidated Ice Machine Co. v. Kelfer, 134 Ill. 481.

Joint—both parties are liable.

Village of Carterville, v. Cook, 129 Ill. 152.

Joint—is not defense, where one of the parties is sued.

Union Ry. & T. Co. v. Shacklet, Admr., 119 Ill. 232.

**s. Failure to Warn.**

**In failing to warn of danger.**

Failure to warn passenger of a sharp curve in street car line, going around corner—shown.

C. C. Ry. Co. v. McCaughna, 216 Ill. 202.

Of master in failing to warn—shown.

Spring Valley Coal Co. v. Chiaventone, 214 Ill. 314.

Failure to warn of danger—shown.

M. & O. R. R. Co. v. Vallowe, 214 Ill. 124.

Rogers v. C. C. C. & St. L. Ry. Co., 211 Ill. 126.

Shickle-Harrison & H. Iron Co. v. Beck, 212 Ill. 268.

Failure to warn of electric wire, shown.

Commonwealth Elec. Co. v. Melville, 210 Ill. 70.

Failure to warn of danger. Shown.

Grace & Hyde Co. v. Probst, 208 Ill. 147.

Of foreman failing to warn of danger—shown.

Pressed Steel Co. v. Herath, 207 Ill. 576.

Failure to warn servant.

Momence Stone Co. v. Turrell, 205 Ill. 515.

In failing to warn of uncovered shafting.

Nelson Morris & Co. v. Malone, Admx., 200 Ill. 132.

In handling train at crossing—cut in two to let public across—shown—engine suddenly backed without warning.

C. & E. I. R. R. Co. v. Filler, 195 Ill. 9.

Of section hand in failing to warn engineer that rail had been removed, is negligence of the master.

C. & A. R. R. Co. v. Eaton, Admx., 194 Ill. 441.

In failing to warn night watchman of gravel pile near track—fell over while pursuing trespasser.

C. R. I. & P. Ry. Co. v. Kinnare, Admr, 190 Ill. 9.

Failing to warn of dangerous mine wall—held shown.

Consolidated Coal Co. v. Gruber, 188 Ill. 584.

Failure to warn of dangerous weakness of tunnel walls—shown.

Ross et al., v. Shanley, 183 Ill. 390.

In failing to warn servant of danger of steam in boiler—shown.

Kewanee Boiler Co. v. Erickson, 181 Ill. 549.

In failing to warn servant of a defective door that fell upon him—shown.

Griffin Wheel Co. v. Markus, 180 Ill. 391.

In failing to warn inexperienced servant of danger—shown.

Harris v. Shebek, 151 Ill. 287.

#### **t. High Speed as.**

(See also ORDINANCES—STATUTES.)

High speed over crossing—held to be.

Potter, Receiver, v. O'Donnell, 199 Ill. 119.

Of railroad company—high speed at crossing—shown.

C. & A. R. R. Co. v. Pearson, Admx., 184 Ill. 386.

In violating speed ordinance in running engine in railroad yards shown.

E. & St. L. C. Ry. Co. v. Reames, 173 Ill. 583.

High speed in violation of ordinance presumes negligence.

I. C. R. R. Co. v. Ashline, 171 Ill. 313.

High speed may be, although no ordinance regulates speed.

E. J. & E. Ry. Co. v. Raymond, 148 Ill. 242.

Omission to perform statutory duty, is per se.

T. H. & I. Ry. Co. v. Voelker, 129 Ill. 541.

Violation of speed ordinance—frightened horses—shown.

C. & E. I. R. R. Co. v. People, 120 Ill. 667.

#### **u. In Operating Elevators.**

(See also ELEVATOR ACCIDENTS.)

Of landlord in failing to light elevator shaft—shown.

Shoninger Co. v. Mann, 219 Ill. 242.

In operating elevator—shown.

Siegel, Cooper & Co. v. Norton, 209 Ill. 201.

In improperly constructing elevator shaft—shown.

Beldler v. Bradshaw, 200 Ill. 425.

In starting elevator before passenger had stepped out.

Chicago Exchange Bldg. Co. v. Nelson, 197 Ill. 334.

### **v. Negligence—Comparative.**

Comparative—rule as to not law in Illinois.

L. S. & M. S. Ry. Co. v. Hessons, 150 Ill. 547.

Comparative—applies only where due care shown.

T. St. L. & K. C. R. R. Co. v. Cline, 135 Ill. 42.

Comparative—rule as to stated.

C. & N. W. Ry. Co. v. Dunleavy, 129 Ill. 135.

Comparative—rule as to need not be stated in instruction.

C. & E. I. R. R. Co. v. O'Connor, 119 Ill. 588.

Comparative—rule of—held law in Illinois (obsolete).

I & St. L. Ry. Co. v. Evans, 88 Ill. 63.

Comparative—instruction on is not error.

L. S. & M. S. Ry. Co. v. Johnson, 135 Ill. 641.

Comparative negligence—rule as to re-stated.

C. & A. R. R. Co. v. Gretaner, 46 Ill. 75.

**NOTICE OF DANGER.****IN GENERAL.****TO PLAINTIFF.****CONSTRUCTIVE TO DEFENDANT.****ACTUAL TO DEFENDANT.**

(See also KNOWLEDGE.)

**a. In General.**

To a fellow employe is not to master.

Henrietta Coal Co. v. Martin, 221 Ill. 460.

To master—is not required where the negligence causing injury is the master's own—defective scaffolding.

Metcalf Co. v. Nystedt, 203 Ill. 333.

Servant must give master notice of defects known to him.

Ill. Steel Co. v. Mann, 170 Ill. 200.

Must be shown—defective brake.

Sack v. Dolese, 137 Ill. 129.

Attempt to repair sidewalk before injury is proof of defect.

Town of Wheaton v. Hadley, 131 Ill. 640.

Of defective crosswalk—when not material.

Village of Jefferson v. Chapman, 127 Ill. 439.

Judicial—of existence of cities (77 Ill. 496 overruled).

City of Rock Island v. Cuinely, 126 Ill. 408.

Judicial—of statutes—need not be pleaded.

C. & A. R. R. Co. v. Dillon, 123 Ill. 571.

Or failure to use due diligence to discover defect must be shown.

C. & A. R. R. Co. v. Platt, 89 Ill. 141.

Notice to agent of mine owner is notice to owner.

Quincy Coal Co. v. Hood, 77 Ill. 68.



Notice of defective sidewalk to city—rule as to.

City of Chicago v. Langlass, 66 Ill. 361.

**b. To Plaintiff.**

To plaintiff of defect—not shown.

Metcalf Co. v. Nystedt, 203 Ill. 333.

To plaintiff of defect what is not.

Wrisley Co. v. Burke, 203 Ill. 250.

Evidence of notice of defect, held not to be notice of the danger that is unusual.

Slack v. Harris, 200 Ill. 96.

Of gravel pile near track over which night watchman fell—what is not.

C. R. I. & P. Ry. Co. v. Kinnare, Admr., 190 Ill. 9.

That track is not ballasted, though open and obvious, does not charge an employe with notice of the fact, when he is in the discharge of his duty—his attention on his work of coupling cars.

L. E. & W. Ry. Co. v. Morrissey, 177 Ill. 376.

**c. Constructive to Defendant.**

(See also KNOWLEDGE.)

Of ordinance to railroad company—what is.

C. & A. R. R. Co. v. Averill, 224 Ill. 516.

To master—what is of a defective spring in a slab cutting machine.

U. S. W. E. & P. Co. v. Butcher, 223 Ill. 638.

Actual and constructive of defective sidewalk—what is—to city.

City of Mattoon v. Faller, 217 Ill. 273.

Constructive to master of defect—shown—defective coupling.

C. & A. R. R. Co. v. Walters, 217 Ill. 87.

Constructive to city—guy rope hanging in street from 10 A. M. to 8:30 P. M. held to be.

City of Ottawa v. Hayne, 214 Ill. 45.

To landlord of defect in stairway of his building—held not shown.

Burke v. Hulett, 216 Ill. 545.

Need not be of the particular defect complained of. Notice of one defect presumes notice of whatever inspection would show.

Franke v. Hanley, 215 Ill. 216.

Constructive to city—of pole in alley for six years held shown.

South Side Elevated Ry. Co. v. Nesvig, 214 Ill. 463.

May be shown by evidence of the condition of defective sidewalk for long time prior to injury.

City of Elgin v. Nofs, 212 Ill. 20.

Constructive shown—four years same condition.

Ill. T. R. R. Co. v. Thompson, 210 Ill. 226.

Of latent defect—to master—shown.

Barnett & Record Co. v. Schlapka, 208 Ill. 426.

Direct and constructive—held shown.

Momence Stone Co. v. Turrell, 205 Ill. 515.

Constructive, of defect—to defendant—shown.

Economy L. R. Co. v. Hiller, 203 Ill. 518.

Metcalf Co. v. Nystedt, 203 Ill. 333.

Evidence of defects in sidewalk at places other than where injury occurred held competent as showing notice; also that others fell on same sidewalk.

City of Taylorville v. Stafford, 196 Ill. 288.

To city of excavation in street is presumed where the city caused the excavating.

City of Salem v. Webster, 192 Ill. 369.

To master—knowledge that a “cinder tap” might explode, is constructive notice of danger to servant.

Western Tube Co. v. Polobiuski, 192 Ill. 113.

To defendant of a defective pin in the engine of a hoisting apparatus—shown.

Union Bridge Co. v. Teehan, 190 Ill. 374.

Party constructing faulty building is presumed to have notice of defect.

Whitney & S. Co. v. O'Rourke, 172 Ill. 177.

Constructive to railroad company is shown where an obstacle remained on track in railroad yards for four hours.

C. & N. W. Ry. Co. v. Delaney, 169 Ill. 581.

Constructive to city presumed where sidewalk is out of repair “a considerable time.”

Hogan v. City of Chicago, 168 Ill. 551.

To brakeman of hole between ties of track on which he stumbled—not shown.

I. C. R. R. Co. v. Sanders, 166 Ill. 270.

To master—when presumed.

Consolidated Coal Co. v. Haenni, 146 Ill. 614.

Constructive—instruction as to, approved.

City of La Salle v. Porterfield, 138 Ill. 114.

Of danger—to defendant—what is.

Consolidated Ice Mch. Co. v. Kelfer, 134 Ill. 481.

Constructive—to city of defective sidewalk—shown.

City of Sterling v. Merrill, 124 Ill. 522.

Of defective sidewalk by city—when presumed.

City of Chicago v. Dalle, 115 Ill. 386.

To city—of blasting being done in street—shown.

City of Joliet v. Seward, 99 Ill. 267.

City presumed to have notice of work being done in street.

City of Chicago v. Brophy, 79 Ill. 277.

Notice to city of alleged defective sidewalk not shown.

City of Chicago v. McCarthy, 75 Ill. 602.

Constructive notice shown where defendant could have known of defect by the exercise of due diligence.

T. P. & W. Ry. Co. v. Conroy, 61 Ill. 162.

Notice—presumed where work is being done for city.

City of Chicago v. Johnson, 53 Ill. 91.

Constructive notice of defective tank to city—shown.

City of Chicago v. Major, 18 Ill. 349.

Constructive shown—pole near track three years.

C. & I. R. R. Co. v. Russell, 91 Ill. 299.

What is to city of defective sidewalk—if it could have known by the exercise of due diligence.

City of Aurora v. Dole, 90 Ill. 46.

City of Aurora v. Hillman, 90 Ill. 61.

City of Springfield v. Doyle, 76 Ill. 202.

#### d. Actual Notice.

(See also KNOWLEDGE.)

That a wire in street is live is necessary to show contributory negligence in touching.

Village of Palestine v. Siler, Admr., 225 Ill. 630.

To defendant—what is where boy playing in street is run down by wagon.

Star Brewery Co. v. Houck, 222 Ill. 348.

To mine owner—of gas in mine—held shown.

Altrens Mining Co. v. Camduff, 221 Ill. 354.

Of defect—to machine boss is notice to master.

Odin Coal Co. v. Tadlock, 216 Ill. 624.

To conductor—of desire to get on car—held shown.

C. U. T. Co. v. Hawthorn, 211 Ill. 367.

To defendant of danger—through servant—held shown.

Rogers v. C. C. C. & St. L. Ry. Co., 211 Ill. 126.

To mine owner of defective roof—shown.

C. W. & V. Coal Co. v. Moran, 210 Ill. 9.

To fire boss of mine—held not to owner.

Riverton Coal Co. v. Shepherd, 207 Ill. 395.

Of defect—to defendant—shown.

Missouri Mall. Iron Co. v. Dillon, 206 Ill. 145.

To master of defect what is.

Wrisley Co. v. Burke, 203 Ill. 250.

To fireman of trespasser on track is to railroad company.

Martin, Admr., v. C. & N. W. Ry. Co., 194 Ill. 138.

To master—of loose car door which struck section hand while train was passing—shown—to train crew is to railroad company.

C. & A. R. R. Co. v. Cullen, Admx., 187 Ill. 523.

Of custom that passengers boarded cars at certain place—held shown.

N. C. St. Ry. Co. v. Kaspers, 186 Ill. 246.

To foreman is to master.

C. & A. R. R. Co. v. Scanlan, 170 Ill. 106.

To defendant—of defect—cogwheel broke on hoisting apparatus, held shown.

Swift & Co. v. Foster, 163 Ill. 51.

To policeman—is to the city of defective sidewalk.

City of Joliet v. Looney, 159 Ill. 471.

To agent—is to principal—defective mine door.

Sangamon Coal Co. v. Wiggerhaus, 122 Ill. 279.

To city—of defective sidewalk—rule as to.

City of Chicago v. Stearns, 105 Ill. 554.

To defendant—of defective locomotive—by foreman.

C. & E. I. R. R. Co. v. Rung, 104 Ill. 641.

By defendant of defective machinery—not shown.

E. St. L. & P. Co. v. Hightower, 92 Ill. 139.

## OBJECTIONS.

### GENERAL AND SPECIFIC—RULES.

#### TO PLEADINGS.

#### TO CONDUCT OF ATTORNEY.

#### WHEN WAIVED, CURED OR ABANDONED.

#### TO EVIDENCE.

#### MISCELLANEOUS.

### a. General and Specific—Rules as to.

General—what raised by—materiality.

I. C. R. R. Co. v. Prickett, Admr., 210 Ill. 140.

Special to evidence when necessary—scope of.

I. C. R. R. Co. v. Prickett, 210 Ill. 140.

To improper cross-examination—not raised by general objection.

Wrisley Co. v. Burke, 203 Ill. 250.

General below cannot be made specific in upper court.

W. C. St. Ry. Co. v. Buckley, 200 Ill. 260.

When specific—waives points not covered.

T. H. & I. Ry. Co. v. Voelker, 129 Ill. 541.

### b. To Pleadings.

(See also PLEADINGS.)

That law of foreign state is not pleaded—when waived.

Christiansen v. Graver Tank Works, 223 Ill. 142.

That allegations of declaration are defective is waived by filing of general issue.

Ill. Steel Co. v. Hanson, 195 Ill. 106.

**c. To Conduct of Counsel.**

(See also CONDUCT OF JUDGE OR ATTORNEY.)

To conduct of counsel—if sustained cure the error.

C. & A. R. R. Co. v. McDonnell, 194 Ill. 83.

To conduct of counsel must be ruled on and exception saved.

C. & E. R. R. Co. v. Cleminger, 178 Ill. 536.

To remarks of counsel—how saved.

Marder, Luse & Co. v. Leary, 137 Ill. 319.

**d. When Waived, Cured or Abandoned.**

Are waived if not specifically pointed out.

City of Chicago v. Saldman, 225 Ill. 625.

St. L. A. & T. H. R. R. Co. v. Bauer, 156 Ill. 106.

Must be all made in trial court.

Muren Coal & Ice Co. v. Howell, 217 Ill. 190.

Not raised by motion for new trial are waived. .

Odin Coal Co. v. Tadlock, 216 Ill. 624.

Not raised below not reviewable on appeal.

I. C. R. R. Co. v. Leiner, Admr., 202 Ill. 624.

Chicago Junction Ry. Co. v. McGrath, 203 Ill. 511.

C. & E. I. R. R. Co. v. Randolph, 199 Ill. 126.

Must be duly raised and saved at trial.

Union Show Case Co. v. Blindauer, 175 Ill. 59.

Empire Laundry Co. v. Brady, 164 Ill. 59.

I. C. R. R. Co. v. Harris, 162 Ill. 200.

Not duly made and saved at trial is waived.

St. L. A. & T. H. R. R. Co. v. Eggman, 161 Ill. 155.

Hughes v. Richter, 161 Ill. 409.

To instruction must be pointed out.

St. L. A. & T. H. R. R. Co. v. Bauer, 156 Ill. 106.

Error in sustaining cured if evidence is afterward otherwise put in.

Mitchell v. Hindman, 150 Ill. 538.

Must be first raised in trial court.

Helmuth v. Bell, 150 Ill. 263.

May be abandoned by cross-examination—when.

City of Beardstown v. Smith, 150 Ill. 169.

Must be had at trial or is waived.

C. P. & St. L. Ry. Co. v. Lewis, 145 Ill. 67.

Not argued in brief are waived.

C. C. Ry. Co. v. VanVleck, 143 Ill. 480.

Of variance—waived unless made at trial.

Wight Fire Proofing Co. v. Poczekał, 130 Ill. 139.

#### **e. To Evidence—Rules as to.**

(See also EVIDENCE.)

To evidence must be specific to be considered on appeal.

C. C. Ry. Co. v. Foster, 226 Ill. 288.

To evidence—when good though general.

C. R. I. & P. R. R. Co. v. Rathmean, 225 Ill. 278.

To evidence—may be saved by an instruction to disregard it, asked and refused.

C. U. T. Co. v. May, 221 Ill. 530.

To evidence must be made when the evidence is offered or it is waived.

C. U. T. Co. v. May, 221 Ill. 530.

To evidence—when waived by statement of counsel as to.

C. C. Ry. Co. v. McCaughna, 216 Ill. 202.

General to evidence—what raised by.

I. C. R. R. Co. v. Prickett, 210 Ill. 140.

To evidence—not saved unless motion for new trial is made.

C. B. & Q. R. R. Co. v. Haselwood, 194 Ill. 69.



To evidence must be had at trial.

I. C. R. R. Co. v. Gilbert, 157 Ill. 354.

General, to evidence—force of.

N. C. St. Ry. Co. v. Cotton, 140 Ill. 487.

To evidence as “incompetent, immaterial and irrelevant”  
scope of.

C. & E. R. R. Co. v. Holland, 122 Ill. 461.

To evidence must be specific.

C. & E. I. R. R. Co. v. People, 120 Ill. 667.

I. & St. L. R. R. Co. v. Estes, 96 Ill. 470.

#### **f. Miscellaneous.**

That question calls for a conclusion—good.

American Car Co. v. Hill, 226 Ill. 227.

That question has been asked before—good.

Buck v. Maddock, 167 Ill. 219.

That mayor did not sign ordinance—when bad.

T. H. & I. Ry. Co. v. Voelker, 129 Ill. 541.

**ORDINANCES.**

(See also EVIDENCE, PRACTICE.)

As to giving transfers on street railways in Chicago—when violated—when competent.

C. U. T. Co. v. Biethauer, 223 Ill. 521.

Of village as to guard wires for wires of electric railway—not competent where not relied on.

Postal Tel-Cable Co. v. Likes, 225 Ill. 249.

One on tracks by license and employe is entitled to protection of—as to speed of trains.

E. St. L. C. Ry. Co. v. Reames, 173 Ill. 582.

E. St. L. C. Ry. Co. v. Eggman, 170 Ill. 538.

Regulating running of trains and switching—held admissible.

C. & A. R. R. Co. v. O'Neil, 172 Ill. 527.

When should be specially pleaded—when admissible under general pleading.

I. C. R. R. Co. v. Ashline, 171 Ill. 313.

E. St. L. C. Ry. Co. v. Eggman, 170 Ill. 538.

As to street car stopping for passengers at crossings.

W. C. St. Ry. Co. v. Manning, 170 Ill. 418.

Regulating speed of trains—held properly admitted.

I. C. R. R. Co. v. Crawford, 169 Ill. 554.

Regulating speed of wagons on street admissible where child is run over by wagon.

Brink's Ex. Co. v. Kinnare, 168 Ill. 643.

Prohibiting escaping steam from locomotives—approved.

C. R. I. & P. Ry. Co. v. Steckman, 224 Ill. 500.

What is notice of to railroad company.

C. & A. R. R. Co. v. Averill, 224 Ill. 516.

As evidence—to show duty to repair—good.

City of Gibson v. Murray, 216 Ill. 589.

As to speed—immaterial in case where not relied on.

C. C. Ry. Co. v. Shaw, 220 Ill. 532.

Admission of—as evidence.

P. C. C. & St. L. Ry. Co. v. Robson, 204 Ill. 254.

Requiring building of sidewalk—competent.

City of Beardstown v. Clark, 204 Ill. 524.

Ordinance as to speed is immaterial where passenger is thrown from car at curve.

C. & W. I. Ry. Co. v. Newell, 212 Ill. 332.

Preliminary proof of—what sufficient.

C. & E. I. Ry. Co. v. Beaver, 199 Ill. 34.

Violation of speed ordinance—force of.

C. & E. I. R. R. Co. v. Mochell, 193 Ill. 208.

Violation of elevator ordinance does not excuse contributory negligence.

Browne, Admr., v. Slegel, Cooper & Co., 191 Ill. 226.

As to elevators—proof of violation of—makes a *prima facie* case—fell into open shaft.

H. Channon Co. v. Hahn, 189 Ill. 28.

Objection to—when properly raised.

L. N. A. & C. Ry. Co. v. Patcher, 167 Ill. 204.

Where plaintiff knew of violation of, he may recover—when.

Swift & Co. v. Fue, 167 Ill. 443.

As to ringing bell of locomotive—held good.

I. C. R. R. Co. v. Gilbert, 157 Ill. 354.

Employes are protected by ordinances, same as third parties.

I. C. R. R. Co. v. Gilbert, 157 Ill. 354.

As to keeping premises safe applies to property owned by city, same as to private owners.

City of Pekin v. McMahon, 154 Ill. 141.

Regulating speed held to apply to all vehicles on wheels.

E. St. L. C. Ry. Co. v. O'Hara, 150 Ill. 580.

How should be pleaded in declaration.

A. T. & S. F. Ry. Co. v. Feehan, 149 Ill. 202.

Presumed to be in force—when.

A. T. & F. S. Ry. Co. v. Feehan, 149 Ill. 202.

As to elevators—licensee not protected by.

Gibson v. Leonard, 143 Ill. 184.

When competent under amended count.

C. & I. R. R. Co. v. Lane, 130 Ill. 117.

When defective pleading of is cured by verdict.

A. T. & S. F. Ry. Co. v. Feehan, 149 Ill. 202.

Objection to that mayor did not sign—when ineffectual.

T. H. & I. Ry. Co. v. Voelker, 129 Ill. 541.

Proof necessary for admission of as evidence.

T. H. & I. Ry. Co. v. Voelker, 129 Ill. 541.

That plaintiff was violating is no defense.

Pennsylvania Co. v. Frana, 112 Ill. 399.

As to speed is a prohibition not a license.

Wabash Ry. Co. v. Henks, 91 Ill. 406.

Ordinance—party not necessarily liable for violation.

Kepperly v. Ramsden, 83 Ill. 354.

**ORDINARY AND DUE CARE.**

GENERAL RULES AS TO.

PLEADINGS AS TO.

HELD NOT SHOWN.

HELD SHOWN.

BY CHILDREN AND MINORS.

WHEN QUESTION OF LAW—WHEN OF FACT.

Ordinary care consists in acting or failing to act, as an average person of like age, experience and intelligence would act or fail to act under like conditions. If reasonable minds would differ as to the exercise of ordinary care, it is presumed to have been exercised.

**a. General Rules as to.**

(See also CONTRIBUTORY NEGLIGENCE.)

By person partially deaf crossing railroad tracks.

T. P. & W. Ry. Co. v. Hammett, 220 Ill. 9.

Meaning of rule as to, explained.

City of Aurora v. Scott, 185 Ill. 539.

Need not be shown where defendant has been guilty of willful violation of a statutory duty.

Pawnee Coal Co. v. Royce, 184 Ill. 402.

No more than, required—to avoid accident.

City of Spring Valley v. Gavin, 182 Ill. 232.

Ordinary and due care—held synonymous terms.

B. & O. S. W. Ry. Co. v. Farth, 175 Ill. 58.

Slight negligence is not inconsistent with the exercise of.

C. C. Ry. Co. v. Dinsmore, 162 Ill. 658.

Not more than ordinary care is required of plaintiff.

N. C. St. Ry. Co. v. Eldridge, 151 Ill. 543.

C. C. C. & St. L. Ry. Co. v. Baddeley, 150 Ill. 328.

Slight negligence not inconsistent with.

L. S. & M. S. Ry. Co. v. Hassions, 150 Ill. 547.

Must be proved by plaintiff as part of his case—circumstantial evidence good to show.

I C. R. R. Co. v. Nowicki, 148 Ill. 29.

Burden is on plaintiff to show.

N. C. St. Ry. Co. v. Louis, 138 Ill. 9.

Burden is on plaintiff to show.

C. & A. R. R. Co. v. Adler, 129 Ill. 335.

Burden of proving is on plaintiff.

Willard v. Swanson, 126 Ill. 381.

Blanchard v. L. S. & M. S. Ry. Co., 126 Ill. 417.

Rule as to.

Village of Mansfield v. Moore, 124 Ill. 133.

C. & St. L. P. Ry. Co. v. Hutchinson, 120 Ill. 537.

Must be proven by plaintiff—instruction.

C. & A. R. R. Co. v. Flitsam, 123 Ill. 518.

Rule for determining what is.

L. S. & M. S. Ry. Co. v. Brown, 123 Ill. 163.

Slight negligence is not inconsistent with exercise of.

C. B. & Q. R. R. Co. v. Warner, 123 Ill. 38.

Is consistent with mistaken judgment of fact.

C. & E. I. R. R. Co. v. O'Connor, 119 Ill. 538.

Must be shown—rule as to.

Calumet I. & S. Co. v. Martin, 115 Ill. 359.

Crossing railroad tracks—rule as to.

Pennsylvania Co. v. Frana, 112 Ill. 399.

Must not be ignored in instruction.

N. C. Rolling Mill Co. v. Morrissey, 111 Ill. 646.

Of plaintiff must be shown.

W. St. L. & P. Ry. Co. v. Wallace, 110 Ill. 114.

C., B. & Q. Ry. Co. v. Johnson, 103 Ill. 512.

Not consistent with slight negligence.

C., B. & Q. Ry. Co. v. Avery, 109 Ill. 314.

Ordinary and due care synonymous.

Schmidt v. Sinnott, 103 Ill. 160.

Standard as to what is—defective sidewalk.

City of Bloomington v. Perdue, 99 Ill. 329.

Must be shown by servant.

Pennsylvania Co. v. Lynch, 90 Ill. 333.

I. & St. L. R. R. Co. v. Evans, 88 Ill. 63.

Care required by a person under sudden alarm or danger.

Wesley City Coal Co. v. Healer, 84 Ill. 126.

Want of due care not shown when reasonable minds would differ as to.

Pfau v. Reynolds, 53 Ill. 212.

Due care by person in a dangerous position—train derailed passenger jumped.

G. & C. W. R. R. Co. v. Yarwood, 17 Ill. 509.

Due care must be shown by a passenger injured.

G. & C. W. R. R. Co. v. Fay, 16 Ill. 558.

Degree of care required by plaintiff—rule.

Aurora Branch R. R. Co. v. Grimes, 13 Ill. 585.

### **b. Pleadings as to.**

(See also PLEADINGS.)

Failure to aver is cured by verdict.

B. & O. S. W. Ry. Co. v. Then, 159 Ill. 535.

Gerke v. Faucher, 158 Ill. 377.

When sufficiently averred.

C. C. Ry. Co. v. Jennings, 157 Ill. 274.

Exercise of due care must be alleged.

C., B. & Q. Ry. Co. v. Hazzard, 26 Ill. 373.

**c. Held Not Shown.**

Held not shown—driving over rough street.

Village of Lockport v. Licht, 221 Ill. 35.

Evidence of—questionable.

I. C. R. R. Co. v. Wade, 206 Ill. 523.

Held not shown—scrub woman fell into elevator shaft—acquainted with premises.

Jorgenson v. Johnson Chair Co., 169 Ill. 429.

Want of facts tending to show.

C., B. & Q. Ry. Co. v. Warner, 108 Ill. 538.

Due care by plaintiff not shown—fell into excavation.

Kepperly v. Ramsden, 83 Ill. 354.

Ordinary care not shown—passenger carried beyond station—got off in dark—fell through bridge.

I. C. R. R. Co. v. Green, 81 Ill. 19.

Failure to ring bell at crossing does not excuse want of due care.

C., B. & Q. R. R. Co. v. Harwood, 80 Ill. 88.

Ordinary care held not shown where person drives upon track without trying to discover if train is approaching.

C. & N. W. Ry. Co. v. Hatch, 79 Ill. 137.

Ordinary care in seeking to turn off track in front of approaching street car—not shown.

C. W. D. Ry. Co. v. Bert, 69 Ill. 388.

Ordinary care in attempting to cross series of tracks at crossing—not shown.

C., B. & Q. Ry. Co. v. Rosenfeld.

Due care in alighting from train—not shown.

**d. Held Shown.**

C., B. & Q. Ry. Co. v. Hazzard, 26 Ill. 373.

Ordinary care—in seeking to be cured—what is a sufficient showing.

The Variety Mfg. Co. v. Landaker, Admx., 227 Ill. 21.



In place of danger—railroad crossing accident—shown.

Elgin, J. & E. Ry. Co. v. Hoadley, 220 Ill. 463.

What is sufficient evidence of the exercise of—horse frightened by automobile.

Christy v. Elliott, 216 Ill. 31.

In sudden peril—held shown.

So. Chicago City Ry. Co. v. Kinnare, 216 Ill. 451.

Siegel, Cooper & Co. v. Norton, 209 Ill. 201.

In seeking to be cured of injury—what is—held shown.

C. C. Ry. Co. v. Saxby, 213 Ill. 274.

Turning on to track in front of street car—when it is not want of.

Chicago North Shore St. Ry. Co. v. Strathman, 213 Ill. 252.

What is on plaintiff's part—rule—instruction.

C. C. Ry. Co. v. O'Donnell, 208 Ill. 267.

By plaintiff—held shown.

N. C. St. Ry. Co. v. Rodert, 203 Ill. 413.

Riverton Coal Co. v. Shepherd, 207 Ill. 395.

By boy "hitching" on to back end of wagon with consent of driver—shown—struck by pole of following wagon.

Ill. Iron & Metal Co. v. Weber, 196 Ill. 526.

In crossing track between parts of a train at crossing, cut in two to let public pass—shown—train suddenly backed up.

C. & E. I. R. R. Co. v. Filler, 195 Ill. 9.

Shown—where plaintiff fell into elevator shaft—door broken—no lights.

H. Channon Co. v. Hahn, 189 Ill. 28.

By parent of child in street—shown.

W. C. St. Ry. Co. v. Liderman, 187 Ill. 463.

Exercise of shown by stock shipper where car kicked against car he was in.

I. C. R. R. Co. v. Anderson, 184 Ill. 295.

Crossing in front of approaching train—held shown.

C. & A. R. R. Co. v. Smith, 180 Ill. 453.

When alighting from street car—what is.

W. C. St. Ry. Co. v. Manning, 170 Ill. 418.

Shown where street car ran into wagon.

W. C. St. Ry. Co. v. McCallum, 169 Ill. 240.

In crossing railroad tracks—shown—two trains passing in opposite directions.

C. & N. W. Ry. Co. v. Hansen, 166 Ill. 623.

Of passenger where street car ran into wagon—shown.

W. C. St. Ry. Co. v. McNulty, 166 Ill. 203.

What is—defined—proof of.

C. C. Ry. Co. v. Dinsmore, 162 Ill. 658.

B. & O. S. W. Ry. Co. v. Then, 159 Ill. 535.

Walking over sidewalk known to be defective, shown.

Village of Cullom v. Justice, 161 Ill. 372.

In crossing railroad tracks—shown.

L. S. & M. S. Ry. Co. v. Ouska, 151 Ill. 232.

By person crossing open ditch at street crossing hid by weeds—shown.

City of Beardstown v. Smith, 150 Ill. 169.

In crossing railroad tracks—what is.

E., J. & E. Ry. Co. v. Raymond, 148 Ill. 242.

In sudden danger—rule—run down on bridge by train—shown.

P. D. & E. Ry. Co. v. Rice, 144 Ill. 227.

In passing over sidewalk known to be defective.

City of Sandwich v. Dolan, 133 Ill. 177.

Defined—railroad crossing accident.

C. & A. R. R. Co. v. Adler, 129 Ill. 335.

What is—defective sidewalk accident.

*Village of Jefferson v. Chapman*, 127 Ill. 439.

In approaching crossing—shown.

*C., St. L. & P. Ry. Co. v. Hutchinson*, 120 Ill. 587.

While unloading car on sidetrack—shown.

*C. & N. W. Ry. Co. v. Goebel*, 119 Ill. 516.

By brakeman—need not watch for defects—struck by bridge too low.

*C. & A. R. R. Co. v. Johnson*, 116 Ill. 206.

By servant in observing conditions of employment—what is.

*U. S. Rolling Stock Co. v. Wilder*, 116 Ill. 100.

By person working in dangerous place—switchman—shown.

*L. S. & M. S. Ry. Co. v. O'Connor*, 115 Ill. 255.

By fireman—going to a fire—what is.

*City of Chicago v. Sheehan*, 113 Ill. 658.

By plaintiff in seeking to be cured—shown.

*Pullman Palace Car Co. v. Bluhm*, 109 Ill. 20.

In crossing sidewalk known to be defective—shown—rules as to.

*City of Bloomington v. Chamberlain*, 104 Ill. 268.

In alighting from moving car—when shown.

*C. & A. R. R. Co. v. Bonifield*, 104 Ill. 223.

After the injury—avoiding effects—what is.

*City of Bloomington v. Perdue*, 99 Ill. 329.

Want of care by person in sudden alarm in failing to exercise proper judgment not shown.

*City of Chicago v. Hessing*, 83 Ill. 204.

Ordinary care in passing near unguarded shafting shown.

*Fairbank v. Haentzsche*, 73 Ill. 236.

Ordinary care by person unloading coal from car on sidetrack—shown.

*I. C. R. R. Co. v. Shultz*, 64 Ill. 172.

Ordinary care in seeking to get stalled wagon off railroad crossing—shown.

C. & A. R. R. Co. v. Hogarth, 38 Ill. 371.

**e. By Children and Minors—Rules as to. .**

(See also CONTRIBUTORY NEGLIGENCE.)

By boy fourteen years old in packing house, struck by car-cass. Reversed for instruction as to.

Swift & Co. v. Rutkowski, 167 Ill. 157 (same case 182 Ill. 18 af'd).

By boy thirteen years old crossing railroad tracks—held shown—no gates—two trains passing each other.

Wabash R. R. Co. v. Smith, 162 Ill. 583.

On the part of a child—what is—rule.

Norton v. Volzke, 158 Ill. 403.

By child seven years of age—what is.

Springfield C. Ry. Co. v. Welsch, 155 Ill. 511.

By child—what is required—rule.

City of Pekin v. McMahon, 154 Ill. 141.

C. & A. R. R. Co. v. Nelson, 153 Ill. 89.

By minor—what is—rule—fifteen years old.

Chicago Drop Forge & F. Co. v. Van Dam, 149 Ill. 337.

Due care by boy of twelve—rule as to.

Kerr v. Forgue, 54 Ill. 482.

And comparative negligence not inconsistent.

Calumet I. & S. Co. v. Martin, 115 Ill. 359.

What is due care by child seven years of age.

C. & A. R. R. Co. v. Murray, 71 Ill. 601.

Required by minor—instruction held erroneous.

C., R. I. & P. Ry. Co. v. Eininger, 114 Ill. 79.

Care required by boy twelve years of age to avoid injury.

Welck v. Lander, Admr., 75 Ill. 93.

**Evidence as to—what may be shown.**

(See also EVIDENCE.)

**Exercise of—may be shown by circumstantial evidence.**

Central Union Bldg. Co. v. Kolander, 212 Ill. 27.

E., J. &amp; E. Ry. Co. v. Hoadley, 220 Ill. 463.

**May be shown by indirect evidence.**

C. &amp; E. I. R. R. Co. v. Beaver, Admr., 199 Ill. 24.

**In sudden peril—at railroad crossing—all surrounding may be shown.**

C. &amp; A. R. R. Co. v. Corson, Admr., 198 Ill. 98.

St. Louis Nat. Stock Yards v. Godfrey, 198 Ill. 288.

**Circumstantial evidence to show—competent.**

I. C. R. R. Co. v. Cozby, 174 Ill. 109.

C., B. &amp; Q. R. R. Co. v. Gunderson, 174 Ill. 496.

**Evidence of conditions surrounding defective walk—good as bearing on.**

Village of Cullom v. Justice, 161 Ill. 372.

**May be shown by circumstantial evidence.**

C. &amp; A. R. R. Co. v. Carey, 115 Ill. 115.

**May be shown by circumstantial evidence.**

Missouri F. Co. v. Abend, 107 Ill. 45.

**f. When a Question of Fact—When of Law.****Held to be a question of fact for jury.**

Potter, Receiver, v. O'Donnell, 199 Ill. 119.

**In sudden danger—question of properly left to the jury.**

Momence Stone Co. v. Graves, 197 Ill. 88.

**Exercise of by plaintiff held a question of fact for the jury.**

C., B. &amp; Q. R. R. Co. v. Pallock, 195 Ill. 156.

**Whether it is—to ride on lower step of a passenger coach, is for the jury in view of all the facts.**

L. S. &amp; M. S. Ry. Co. v. Kelsey, 180 Ill. 530.

Question of fact for jury—getting on moving street car.

N. C. St. Ry. Co. v. Wiswell, 168 Ill. 613.

Fact for jury—crossing railroad track—hit by train—ears muffled.

L. N. A. & C. Ry. Co. v. Patchen, 167 Ill. 204.

When a question of law for the court.

Werk v. Ill. Steel Co., 154 Ill. 427.

In getting off train is fact for jury.

C. & A. R. R. Co. v. Arnol, 144 Ill. 261.

When question of fact—when of law.

C., St. L. & P. Ry. Co. v. Hutchinson, 120 Ill. 587.

Question of fact for jury—when.

Wabash R. R. Co. v. Elliott, 98 Ill. 481.

Stratton v. Central City H. Ry. Co., 95 Ill. 25.

**ORDERS—WORKING UNDER—FORCE OF.**

When servant assumed the risk though working under orders—rails on car—one slipped—not shown here.

C., R. I. & P. Ry. Co. v. Rathmean, 225 Ill. 278.

Order of foreman directing work to be done in certain way—when method is unusual and dangerous, master liable.

I. C. R. R. Co. v. Sporleder, 199 Ill. 184.

Working under order of foreman excuses assumed risk when.

I. C. R. R. Co. v. Atwell, Admx., 198 Ill. 200.

Carpenter building a shed under supervision of foreman held to be working under orders—shed fell over.

Frost Mfg. Co. v. Smith, 197 Ill. 253.

Right of servant to rely on order of foreman—that he will not order him into danger.

Ill. Steel Co. v. McFadden, 196 Ill. 344.

Rule as to assumed risk where servants act under—with knowledge of danger.

Ill. Steel Co. v. McFadden, 196 Ill. 344.

Working under immediate orders of foreman negatives assumed risk—when—rule.

Graver Tank Works v. O'Donnell, 191 Ill. 236.

Servant directed to do work outside his regular employment does not assume risks incident to.

Supple v. Agnew, 191 Ill. 439.

Where workman is ordered by foreman to remove a “catch” from a “body maker” in a tin can factory, he is not a fellow-servant of the foreman who set machine in motion.

Norton Bros. v. Nodebok, 190 Ill. 595.

When servant is working under orders knowledge of danger will not defeat recovery—when.

Chicago Edison Co. v. Moren, Admx., 185 Ill. 571.

Anderson Pressed Brick Co. v. Sobkowiak, 148 Ill. 573.

Master liable where servant is engaged in dangerous work under direct orders unless danger is so imminent that an ordinarily prudent man would not do the work.

Offutt v. Columbia Ex., 175 Ill. 472.



**OWNERSHIP—LAW AS TO.**

Ownership held sufficiently proven by name of restaurant on board in front, and on bill of fare—the same name appearing as the incorporation name of the company.

North Amer. Rest. & Oyster House v. McElligott, Admr., 227 Ill. 317.

Evidence of possession and control more important than.

Ehlen v. O'Donnell, Admr., 205 Ill. 38.

Reputed ownership sufficient.

C. & E. I. R. R. Co. v. Schmitz, 211 Ill. 446.

Name on car as evidence of.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

P., Ft. W. & C. Ry. Co. v. Callaghan, 157 Ill. 406.

That railroad yards were owned by another company—immaterial.

Ill. T. Ry. Co. v. Thompson, 210 Ill. 226.

Of electric wire in alley—not proven as alleged.

Hayes v. Chicago Telephone Co., 218 Ill. 414.

General issue concedes ownership as charged.

C. & E. I. R. R. Co. v. Schmitz, 211 Ill. 446.

Where a crossing is used by several railroad companies.

N. Y. C. & St. L. R. R. Co. v. Luebeck, 157 Ill. 595.

Is conceded where no objection is made as to.

L. E. & W. R. R. Co. v. Wills, 140 Ill. 614.

General issue concedes plaintiff was employe of defendant—and ownership.

McNulta, Receiver, v. Lockridge, 137 Ill. 270.

C. U. T. Co. v. Jerka, 227 Ill. 99.

Calling of physician by defendant is evidence of.

Consolidated Coal Co. v. Bruce, 150 Ill. 449.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

When immaterial—operation determines.

H. & St. J. R. R. Co. v. Martin, 111 Ill. 219.

Slight evidence of ownership and control of railroad train is sufficient where the defendant offered no evidence in contradiction.

P., C. & St. L. Ry. Co. v. Knutson, 69 Ill. 103.

**PASSENGERS.**

(See also CARRIERS OF PASSENGERS.)

Evidence of—held sufficient.

C. T. T. R. R. Co. v. Schiavone, 216 Ill. 275.

After leaving car—what is—rule as to.

C. U. T. Co. v. Rosenthal, 217 Ill. 458.

W. C. St. Ry. Co. v. Buckley, 200 Ill. 260.

One running to catch street car at place not a regular stopping place, held to be a passenger—relation how contracted.

C. U. T. Co. v. O'Brien, Jr., 219 Ill. 303.

Who is—evidence of held sufficient.

Lake St. "L" Ry. Co. v. Burgess, 200 Ill. 628.

Possession of transfer is evidence of.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

That plaintiff had transfer sufficient—need not be produced.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Continues while passenger is on railroad ground or until passenger has had reasonable time to leave the railroad grounds—run down while alighting.

C. T. T. R. R. Co. v. Schmelling, 197 Ill. 619.

Where conductor gives passenger wrong transfer and next conductor refuses it, the passenger should get off or pay another fare. In that case he has an action at common law to recover fare and damage.

Kiley v. C. C. Ry. Co., 189 Ill. 384.

Express messenger riding in express car, held not.

Blank v. I. C. R. R. Co., 182 Ill. 332.

Rules of railroad company prohibiting riding on platform—how far binding on passengers—not without notice of, actual or constructive.

L. S. & M. S. Ry. Co. v. Kelsey, 180 Ill. 530.

One upon station grounds after purchasing ticket, waiting for train, is a passenger.

I. C. R. R. Co. v. Treat, 179 Ill. 576.

One boarding freight train by advice of ticket seller, held to be passenger.

I. C. R. R. Co. v. Davenport, 177 Ill. 110.

Stock shipper riding on freight train, held to be a passenger.

C. & A. R. R. Co. v. Winters, 175 Ill. 294.

I. C. R. R. Co. v. Beebe, 174 Ill. 13.

Is not determined by payment of fare—may exist without.

W. C. St. Ry. Co. v. Manning, 170 Ill. 418.

Boy riding in caboose by consent of conductor—no fare paid, held not to be a passenger.

C. C. C. & St. L. Ry. Co. v. Best, 169 Ill. 301.

Conductor of freight not authorized to carry, company not bound by acts of.

C. C. C. & St. L. Ry. Co. v. Best, 169 Ill. 301.

Relation held not to exist where deceased jumped on front platform of baggage car, and was killed in collision—rule as to.

I. C. R. R. Co. v. O'Keefe, 168 Ill. 115.

Intent to become passenger—when may be shown—declaration as to—when good.

C. & E. I. R. R. Co. v. Chancellor, 165 Ill. 438.

Railroad ticket not a contract—when—passenger fell off platform of excursion train.

C. & A. R. R. Co. v. Dumser, 161 Ill. 191.

May be implied—payment of fare not sole criterion.

N. C. St. Ry. Co. v. Williams, 140 Ill. 275.

One riding on pass is subject to conditions of.

J., S. & E. Ry. Co. v. Southworth, 135 Ill. 250.

Ejecting from street car—willful negligence shown.

N. C. St. Ry. Co. v. Gastka, 128 Ill. 613.

When a stock shipper is a passenger.

L. S. & M. S. Ry. Co. v. Brown, 123 Ill. 163.

Rights of passenger riding on through ticket.

Pennsylvania Co. v. Connell, 112 Ill. 295.

Rule that engineer is agent of the passenger—exploded.

W., St. L. & P. Ry. Co. v. Shacklet, 105 Ill. 364.

May sue either of two roads—collision.

W., St. L. & P. Ry. Co. v. Shacklet, 105 Ill. 364.

Purchase of ticket makes one a passenger.

W., St. L. & P. Ry. Co. v. Rector, 104 Ill. 296.

Liability of railroad company for assault on passenger by brakeman—shown.

C. & E. R. R. Co. v. Flexman, 103 Ill. 546.

When person riding beyond destination is.

C. & E. R. R. Co. v. Flexman, 103 Ill. 546.

When wrongfully ejected from railroad car.

C., B. & Q. Ry. Co. v. Bryan, 90 Ill. 126.

Care required by owners of steam boats for passengers.

Keokuk L. Packet Co. v. True, 88 Ill. 608.

Passenger travelling on free pass can recover only in case of gross negligence.

T. W. & W. R. R. Co. v. Beggs, 85 Ill. 80.

Carrying passengers on freight trains.

C. & A. R. R. Co. v. Flagg, 43 Ill. 364.

Failure to buy ticket—effect of.

C. & A. R. R. Co. v. Flagg, 43 Ill. 364.

Passenger refusing to surrender ticket may be ejected at regular station.

I. C. R. R. Co. v. Whittemore, 43 Ill. 420.

Passengership shown—employee of railroad company.

Ohio & M. Ry. Co. v. Muhling, 30 Ill. 9.

Passengership implied where one takes passage on train—no express contract required.

Frink v. Schroyer, 18 Ill. 416.

Discussion of contract of passengership.

C., B. & Q. R. R. Co. v. Parks, 18 Ill. 460.

**PHYSICAL EXAMINATION OF PLAINTIFF'S INJURY.**

Plaintiff may refuse to submit to examination by defendant's physician. The court has no authority to compel plaintiff to permit such examination.

**Richardson v. Nelson**, 221 Ill. 254.

Evidence that physician made for purpose of testifying for defendant—proper.

**Wrisley Co. v. Burke**, 203 Ill. 250.

Long after injury—when competent.

**W. C. St. Ry. Co. v. Dougherty**, 209 Ill. 241.

That plaintiff refuses to allow—force of.

**Marquette Coal Co. v. Dielle**, 208 Ill. 117.

Plaintiff cannot be compelled to submit to—refusal not error.

**P. D. & E. Ry. Co. v. Rice**, 144 Ill. 227.

**Joliet Street Ry. Co. v. Call**, 143 Ill. 177.

**St. Louis Bridge Co. v. Miller**, 138 Ill. 465.

**C. & E. R. R. Co. v. Holland**, 122 Ill. 461.

**Parker v. Enslow**, 102 Ill. 272.

**PHYSICIANS AND SURGEONS.**

**Operation by physician wrongfully performed.** Performed without authority or consent of patient. Aggravated disease and resulted in insanity. Judgment \$3,000. Affirmed.

Pratt v. Davis, 224 Ill. 300.

**Malpractice by physician in treating colles fracture of the radius, resulting in permanent injury to the left arm.** Judgment \$1,250. Affirmed.

Mitchel v. Hindman, 150 Ill. 538.

**Negligence of physician in treating patient—fractured leg—left shortened.** Judgment \$1,300. Reversed because of refusal of instruction for defendant.

Kendell v. Brown, 74 Ill. 232.

**Negligence of physician and surgeon—unskilful treatment of broken arm resulting in permanent injury.** Judgment \$800. Reversed because of instruction as to the force of—affidavit of absent witness admitted by consent.

Utleigh v. Burns, 70 Ill. 162.

**Negligence of physician.** No facts stated. Judgment for plaintiff. Reversed because of instruction requiring highest degree of care and skill by physician.

McNevin v. Lowe, 40 Ill. 209.

**Negligence of physician and surgeon in operating to cure defect in plaintiff's eye.** Eyesight lost. Judgment \$10,000. Affirmed.

Cadwell v. Farrell, 28 Ill. 438.

**Negligence of physician and surgeon.** Splints and bandages not properly applied to broken bone. Failure to detect dislocation of wrist joint. Judgment for plaintiff. Affirmed.

Ritchey v. West, 23 Ill. 329.

**Duty of physician and surgeon to exercise due care—rule.**

**Kendell v. Brown, 74 Ill. 232.**

**Reasonable care and skill only, required by physician.**

**Utley v. Burns, 70 Ill. 162.**

**Payment of fee not essential to hold physician for negligence.**

**McNevins v. Lowe, 40 Ill. 209.**

**Care required by physician—ordinary only.**

**McNevins v. Lowe, 40 Ill. 209.**

**Care required by physician in treating patient.**

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**a. General Rules as to.**

Two defendants—allegations against one do not apply to the other.

*Klawiter v. Jones*, 219 Ill. 627.

Stating cause of action in alternative—effect.

*Hinchliff v. Rudnik*, 212 Ill. 569.

Declaration taken to jury room—one count was dismissed—effect.

*Elgin, A. & St. Co. v. Wilson*, 217 Ill. 47.

*W. C. St. Ry. Co. v. Buckley*, 200 Ill. 260.

*Hanchett v. Haas*, 219 Ill. 546.

Declaration may be tested by instruction refused, directing jury to ignore. Such instruction acts as demurrer to the evidence.

*American Car Co. v. Hill*, 226 Ill. 227.

Immaterial averments need not be proved.

*C. U. T. Co. v. Brethauer*, 223 Ill. 521.



Objection to, as not setting out law of foreign state in which injury occurred—when waived.

*Christiansen v. Graver Tank Works*, 223 Ill. 142.

Counts not proven by the evidence—status of.

*C. C. Ry. Co. v. Jordan, Admr.*, 215 Ill. 390.

Where demurrer is sustained to count, it should not go to the jury.

*Elgin, A. & St. Co. v. Wilson*, 217 Ill. 47.

*W. C. St. Ry. Co. v. Buckley*, 200 Ill. 260.

*Springfield C. Ry. Co. v. Puntenny*, 200 Ill. 96.

Conclusion to the country and by verification—when.

*C. C. Ry. Co. v. McMeen*, 206 Ill. 108.

Evidence must be confined to issues made by pleadings.

*C. & A. R. R. Co. v. Bell*, 209 Ill. 25.

Counts under special statute and at common law may be joined.

*Marquette Coal Co. v. Dielle*, 208 Ill. 117.

Striking of “suing for the use of” from declaration is a matter of course and requires no further pleading.

*C. & A. R. R. Co. v. Murphy*, 198 Ill. 462.

Immaterial allegations need not be proved.

*E. St. L. C. Ry. Co. v. Altgen*, 210 Ill. 213.

Declaration—when an allegation is immaterial and need not be proved.

*C. & G. T. Ry. Co. v. Spurney*, 197 Ill. 471.

Dismissed counts—status of.

*Slack v. Harris*, 200 Ill. 96.

Declaration—what should be averred in action for personal injury—duty, neglect and injury.

*Ill. Steel Co. v. Ostrowsky*, 194 Ill. 376.

Less strictness required in the averments of, where complicated machinery is involved.

*Alton Railway & I. Co. v. Foulds, Admr.*, 190 Ill. 367.

Averments should be positive; not by way of recital.

C. C. Ry. Co. v. Hackendahl, 188 Ill. 300.

*Puis darrein continuance*—when proper to allow withdrawal of on sustaining demurrer to (see practice act 1907).

Ripley v. Leverenz, 183 Ill. 519.

Using words “for use of” in personal injury is surplusage.

W. C. St. Ry. Co. v. Lundahl, 183 Ill. 284.

Defendant’s negligence should be alleged so as to show wherein he was negligent.

I. C. R. R. Co. v. Welland, 179 Ill. 609.

Going to trial without issue under pleadings waives pleading necessary.

Hughes v. Richter, 161 Ill. 409.

Surplusage—what is—in declaration.

Pennsylvania Co. v. Conlan, 101 Ill. 93.

Ill. Steel Co. v. Schymauowski, 162 Ill. 447.

Defective pleading is raised by peremptory instruction refused—when.

Gerke v. Faucher, 158 Ill. 377.

Negligence—how should be averred.

C. C. Ry. Co. v. Jennings, 157 Ill. 274.

Declaration against driving park setting up that horse ran away in the park injuring plaintiff—no cause of action.

Hart v. Washington Park Club, 157 Ill. 9.

Unnecessary averments—when proof of must be made.

Wabash Western Ry. Co. v. Friedman, 146 Ill. 583.

Need not aver that negligence was of servants—charging corporation directly is sufficient.

Libby, McNeill & Libby v. Scherman, 146 Ill. 541.

Surplusage in—will be ignored.

C. W. O. Ry. Co. v. Mills, 105 Ill. 63.

C. & A. R. R. Co. v. Dillon, 123 Ill. 571.

Misnomer in name of defendant how remedied.

Pennsylvania Co. v. Sloan, 125 Ill. 72.

What required where lessor and lessee are sued jointly.

Pennsylvania Co. v. Ellett, 132 Ill. 654.

Proof is confined to averments of Narr.

Pennsylvania Co. v. Frana, 112 Ill. 390.

Motion to strike part of Narr. from the files—no authority for such motion.

C. & E. I. R. R. Co. v. O'Connor, 119 Ill. 522.

Must be proved as averred.

Gavin v. City of Chicago, 97 Ill. 66.

Recovery must be had under the pleadings.

T., St. L. & K. C. R. R. Co. v. Cline, 135 Ill. 42.

Sufficiency of—should be raised by demurrer.

C., B. & Q. Ry. Co. v. Harwood, 90 Ill. 425.

Count for needlessly, negligently, wantonly and maliciously blowing whistle—no recovery on proof of mere negligence.

C., B. & Q. R. R. Co. v. Dickson, 88 Ill. 431.

Recovery must be had on the averments of the declaration.

Camp Point Mfg. Co. v. Ballou, 71 Ill. 417.

Pleadings are construed most strongly against the pleader.

Churchill v. C. & A. R. R. Co., 67 Ill. 390.

Misjoinder of counts—held not shown.

Cadwell v. Farrell, 28 Ill. 438.

#### **b. Declaration—Sufficiency of—In General.**

Declaration when stating good cause of action.

L. S. & M. S. Ry. Co. v. Enright, 227 Ill. 403.

Declaration when sufficient after verdict.

C. C. Ry. Co. v. Shreve, 226 Ill. 530.

When negligence of defendant sufficiently averred. High speed of street car.

*C. C. Ry. Co. v. Pural*, 224 Ill. 686.

Declaration held sufficient on demurrer—wall fell over on workman.

*Grace & Hyde Co. v. Strong*, 224 Ill. 630.

Where injury due to unauthorized medical operation on one under anesthetics—consent of patient required.

*Pratt v. Davis*, 224 Ill. 300.

Declaration when not stating a cause of action.

*Klawiter v. Jones*, 219 Ill. 627.

Variance in—not shown.

*Alton R. G. & E. Co. v. Webb*, 219 Ill. 563.

*C. U. T. Co. v. Newmiller*, 215 Ill. 383.

*I. C. R. R. Co. v. Behrens*, 208 Ill. 20.

Declaration—when stating cause of action.

*Sargent Co. v. Baublis*, 215 Ill. 428.

*Commonwealth E. Co. v. Melville*, 210 Ill. 70.

*I. C. R. R. Co. v. Keegan*, 210 Ill. 150.

*Salmon v. Libby, McNeil & Libby*, 219 Ill. 421.

*Hinchliff v. Rudnik*, 212 Ill. 569.

Declaration held sufficiently clear.

*C. U. T. Co. v. Newmiller*, 215 Ill. 383.

Count alleging want of repair sufficient basis for proof that “grab-iron” was not on car.

*Belt Ry. Co. of Chicago v. Confrey*, 209 Ill. 344.

One count supported by evidence—sufficient.

*C. C. Ry. Co. v. O'Donnell, Admr.*, 207 Ill. 478.

Two charges in one count—effect.

*C. C. Ry. Co. v. O'Donnell, Admr.*, 207 Ill. 478.

Count on failure to lower railroad gates—good though ordinance not set out.

*C. & A. R. R. Co. v. Wise*, 206 Ill. 453.

Declaration—demurrer not required if fatally defective.

*P. C. C. & St. L. Ry. Co. v. Robson*, 204 Ill. 254.

Declaration—defects in cured by verdict.

Hartrich v. Hawes, 202 Ill. 334.

Hinchliff v. Rudnik, 212 Ill. 569.

Sargent Co. v. Baubliss, 215 Ill. 428.

Declaration—sufficiency of.

Lake St. "L" Ry. Co. v. Burgess, 200 Ill. 628.

I. C. R. R. Co. v. Scheffner, 209 Ill. 9.

Declaration—interpretation of.

Springfield Con. Ry. Co. v. Puntenny, 200 Ill. 9.

Declaration is sufficient on appeal when not demurred to if it will support the judgment.

Ill. Steel Co. v. Stonevick, 199 Ill. 122.

Declaration alleging injury because of insufficient help held sufficient.

Supple v. Agnew, 191 Ill. 439.

Declaration averring injury because of defective transformer held sufficient.

Alton R. & I. Co. v. Foulds, Admr., 190 Ill. 367.

Declaration held sufficient—passenger riding on step knocked off by structure too near track.

W. C. St. Ry. Co. v. Marks, 182 Ill. 15.

Declaration when stating a good cause of action—brakeman injured—no brake.

I. C. R. R. Co. v. Weiland, 179 Ill. 609.

Averment of negligence held sufficient—boy riding on wagon hit by train at crossing—gates up.

C. & A. R. R. Co. v Redmond, 171 Ill 347.

One good count is sufficient to sustain judgment.

C. & A. R. R. Co. v Redmond, 171 Ill 347.

Must show non-fellowservantship.

Declaration held to state cause of action—passenger alighted in street—train suddenly started throwing him to ground.

Ward v. C. & N. W. Ry. Co., 165 Ill. 462.

When defendant's negligence is sufficiently averred.

*Taylor v. Felsing*, 164 Ill. 331.

Declaration—held sufficient on appeal—watchman run down by engine in yards.

*St. L., A. & T. H. R. R. Co. v. Eggman*, 161 Ill. 155.

One good count will sustain a verdict.

*Cribben v. Callaghan*, 156 Ill. 549.

*Joliet Steel Co. v. Shields*, 134 Ill. 209.

Statutes need not be pleaded,—judicial notice of.

*C. & A. R. R. Co. v. Dillon*, 123 Ill. 571.

What a sufficient averment of high speed.

*I. C. R. R. Co. v. Slater*, 129 Ill. 91.

Defective—but sufficient to allow proof of speed ordinance.

*L. S. & M. S. Ry. Co. v. O'Connor*, 115 Ill. 255.

Declaration charging individuals responsible for fall of county court house being built—insufficient.

*Hollenbeck v. Winnebago Co.*, 95 Ill. 148.

When negligence in managing train sufficiently averred.

*C., B. & Q. Ry. Co. v. Harwood*, 90 Ill. 425.

Averment—"a street of the city known as" held sufficient.

*City of Springfield v. Doyle*, 76 Ill. 202.

### c. Averment as to Notice.

(See also KNOWLEDGE—NOTICE.)

Constructive notice may be proved under averment of actual notice.

*City of La Salle v. Porterfield*, 138 Ill. 114.

Want of knowledge by plaintiff—when need not be averred.  
(But see 224 Ill. 343).

*C. & E. I. R. R. Co. v. Hines*, 132 Ill. 162.

**d. Averment as to Next of Kin.**

Next of kin—averment as to should appear in each count.

*L. S. & M. S. Ry. Co. v. Hessions*, 150 Ill. 547.

Pleadings—in case for death of husband and father.

*Conant v. Griffin, Admr.*, 48 Ill. 410.

Averment as to next of kin must appear in declaration.

*C., R. I. & P. Ry. Co. v. Morris*, 26 Ill. 400.

General issue puts in issue existence of next of kin.

*Conant v. Griffin, Admr.*, 48 Ill. 410.

**e. Averment as to Willful and Wanton Negligence.**

Willful negligence—held sufficiently averred.

*Marquette Coal Co. v. Dielle*, 208 Ill. 117.

Averment of willful and wanton negligence—no recovery allowed on proof of negligence less than willful and wanton.

*Wabash R. R. Co. v. Kingsley*, 177 Ill. 558.

**f. Averments as to Duty and Negligence of Defendant.**

Declaration must set out facts implying duty of defendant, breach and resulting injury.

*McAndrews v. C. L. S. & E. Ry. Co.*, 222 Ill. 232.

Declaration held insufficient in that it failed to set out facts showing a duty on defendant toward plaintiff. A general averment of duty is not enough—the facts from which the duty is inferred must be set out.

*Schueler v. Mueller*, 193 Ill. 402.

Declaration—allegation of duty—held sufficient.

*Western Tube Co. v. Polobuiski*, 192 Ill. 113.

Declaration should aver facts showing duty of defendant to plaintiff.

*C. & A. R. R. Co. v. Clausen*, 173 Ill. 100.

Averment of defendant's negligence must show that negligence averred contributed to the injury alleged.

*McGanahan v. E. St. L. & C. Ry. Co.*, 72 Ill. 557.

**g. Averment as to Ordinary Care.**

Due care—alleging is not alleging want of knowledge.

*Sargent Co. v. Baublis*, 215 Ill. 428.

Count held defective in not alleging due care at time of injury, but not so bad as to justify withdrawal from jury.

*Franklin P. & P. Co. v. Behrens*, 181 Ill. 340.

Ordinary care is sufficiently alleged by general averment.

*I. C. R. R. Co. v. Welland*, 179 Ill. 609.

Due care—when sufficiently averred.

*C. C. Ry. Co. v. Jennings*, 157 Ill. 274.

Failure to plead due care is cured by verdict.

*B. & O. S. W. Ry. Co. v. Then*, 159 Ill. 535.

*Gerke v. Faucher*, 158 Ill. 377.

Declaration must allege due care by plaintiff—what sufficient—though no direct averment.

*C. & N. W. Ry. Co. v. Cross*, 73 Ill. 394.

Due care must be averred—when.

*Lalor v. C., B. & Q. R. R. Co.*, 52 Ill. 401.

Averment of ordinary care not required where horses run away and strike pedestrian.

*Cox v. Brackett*, 41 Ill. 222.

Failure to allege due care is cured by verdict—when (26 Ill 273 distinguished).

*I. C. R. R. Co. v. Simmons*, 28 Ill. 242.

**h. Verdict—How Far Cures—Rules.**

Defect in declaration—when cured by verdict.

*Hartrich et al. v. Hawes*, 202 Ill. 334.



Declaration—when will be held good after verdict.

Himrod Coal Co. v. Clark, 197 Ill. 514.

Declaration—held cured by verdict.

Ill. Steel Co. v. Ostrowsky, 194 Ill. 376.

Ide v. Fratcher, 194 Ill. 552.

Verdict—will not cure a fatally defective declaration—material allegation omitted.

Schueler v. Mueller, 193 Ill. 402.

Defective declaration is cured by verdict—when.

I. C. R. R. Co. v. Treat, 179 Ill. 576.

Defective declaration—when cured by verdict.

Cribben v. Callaghan, 156 Ill. 549.

Libby, M. & L. v. Scherman, 146 Ill. 541.

#### **i. Averments as to Safe Place to Work.**

(See also **SAFE PLACE TO WORK.**)

Declaration need not aver failure to provide safe place, nor that foreman acted within his authority when action is for negligence of foreman in putting servant to work in dangerous place.

American Car Co. v. Hill, 226 Ill. 227.

Declaration alleging death caused by defective electric transformer and insulation—held good.

Alton Railway & I. Co. v. Foulds, Admr., 190 Ill. 367.

Declaration alleging injury from caving in of sewer tunnel held sufficient.

City of La Salle v. Kostka, 190 Ill. 131.

Duty to provide safe place need not be averred.

Cribben v. Callaghan, 156 Ill. 549.

#### **j. Amendments of.**

(See also **AMENDMENTS.**)

Amendments as to character in which plaintiff sues, no grounds for continuance, variance not shown—miner killed.

Litchfield Coal Co. v. Taylor, 81 Ill. 590.

**Statute of limitations—application of.**

- Salmon v. Libby, McNeil & Libby*, 219 Ill. 421.
- So. Chicago C. Ry. Co. v. Kinnare*, 216 Ill. 451.
- Wabash R. R. Co. v. Rhymer*, 214 Ill. 579.
- Hinchliff v. Rudnik*, 212 Ill. 569.
- Mackey v. Northern Milling Co.*, 210 Ill. 115.
- C. C. Ry. Co. v. McMeen*, 206 Ill. 108.
- Wall, Admx., v. C. & O. Ry. Co.*, 200 Ill. 66.

**Declaration—amending after two years by adding averment of due care is not stating new cause of action.**

- C. C. Ry. Co. v. Cooney*, 196 Ill. 466.

**Declaration if defective may be amended after two years—when.**

- C. C. Ry. Co. v. Hackendahl*, 188 Ill. 300.

**New count after two years—when not new cause of action.**

- I. C. R. R. Co. v. Sonders*, 178 Ill. 585.

**Count stating same cause differently held not new cause of action.**

- L. S. & M. S. Ry. Co. v. Hessions*, 150 Ill. 547.

**Additional counts after two years—how reached.**

- C. C. Ry. Co. v. McMeen*, 206 Ill. 108.
- Wall, Admx., v. C. & O. Ry. Co.*, 200 Ill. 66.
- C. & E. I. R. R. Co. v. Wallace*, 202 Ill. 129.

**New cause of action—when stated—rule.**

- C. C. Ry. Co. v. McMeen*, 206 Ill. 108.
- Wabash R. R. Co. v. Rhymer*, 214 Ill. 579.
- Klawiter v. Jones*, 219 Ill. 627.

**k. Averments as to Fellow-Servants.**

(See also FELLOW-SERVANTS.)

**Count charging injury from neglect of another servant should allege they were not fellow-servants.**

- Schillinger Bros. Co. v. Smith*, 225 Ill. 74.

**Must show non-fellow-servants.**

- Joliet Steel Co. v. Shields*, 134 Ill. 209.

Fellow-servantship—absence of need not be averred.

L. E. & St. L. Ry. Co. v. Hawthorn, 147 Ill. 226.

Non-fellow-servantship need not be pleaded (but see Schilling Bros. Co. vs. Smith, 225 Ill. 74).

C. & A. R. R. Co. v. Swan, 176 Ill. 424.

Averment of non-fellow-servant and plea of not guilty raises question of fellow-servants.

Wenona Coal Co. v. Holmquist, 152 Ill. 581.

### **I. Averments as to Damages.**

General averment—proof of a second operation after suit was commenced is competent under.

City of Gibson v. Murray, 216 Ill. 589.

General averment of damages—proof of loss of wages good under.

Ill. Steel Co. v. Ryska, 200 Ill. 280.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Special averment required for proof of loss of profits or special earnings.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Damages, special for wages—general averment sufficient.

Ill. Steel Co. v. Ryska, 200 Ill. 280.

Averment of special damages—when not required.

Ill. Steel Co. v. Ostrowsky, 194 Ill. 376.

Averment of damages—when general is sufficient—when special necessary.

C. & A. R. R. Co. v. McDonnell, 194 Ill. 82.

Declaration—averment of damage held sufficient.

C. & A. R. R. Co. v. McDonnell, 194 Ill. 82.

Alleging injury to "back, spine and brain," sufficient as basis for proof of loss of eyesight, where proximate cause.

W. C. St. Ry. Co. v. Levy, 182 Ill. 525.

**Declaration**—what a sufficient averment to allow evidence of loss from interference with business as nurse.

*C. C. Ry. Co. v. Anderson*, 182 Ill. 298.

**Details of the injury** need not be pleaded to permit proof of a tumor that developed.

*B. & O. S. Ry. Co. v. Slanker*, 180 Ill. 357.

**General averment of damages**—permits proof of all injury reasonably resulting from the negligence alleged.

*N. C. St. Ry. Co. v. Brown*, 178 Ill. 187.

**Damages**—when general averment good—what should be specially pleaded.

*C. C. Ry. Co. v. Taylor*, 170 Ill. 49.

**Loss from inability to continue former employment**—averments required.

*City of Bloomington v. Chamberlain*, 104 Ill. 268.

**General averment of damage**—permanent injury may be shown under.

*Eagle Packet Co. v. Defries*, 94 Ill. 598.

**Damages**—permanence of need not be averred.

*W. C. St. Ry. Co. v. McCallum*, 169 Ill. 240.

**“Total loss of support” under Dram Shop Act**—recovery for partial loss may be had under.

*Buck v. Maddock*, 167 Ill. 219.

**Averment of mental suffering**—when not required to be special.

*Western Brg. Co. v. Meredith*, 166 Ill. 306.

**General averment**—when proof of income is competent under.

*C. & E. I. R. R. Co. v. Meech*, 163 Ill. 305.

**What injuries proveable under general issue.**

*City of Chicago v. McLean*, 133 Ill. 148.

**General averment**—good for proof of “false joint” and defective setting of bone.

*Pullman Palace Car Co. v. Bluhm*, 109 Ill. 20.

Averment of "loss of support" sufficient basis to show "loss of earnings."

*C. & A. R. R. Co. v. Carey*, 115 Ill. 115.

Permanent injury may be shown though not alleged.

*City of Chicago v. Sheehan*, 113 Ill. 658.

### **m. General Issue and Pleas—Effect of.**

General issue does not put the ownership of cars (or question of employment) in issue. Special plea is necessary.

*C. U. T. Co. v. Jerka*, 227 Ill. 95.

General issue concedes incorporation as charged.

*C. & E. I. R. R. Co. v. Schmitz*, 211 Ill. 446.

Pleading general issue—waives question of sufficiency of declaration and right of motion to exclude evidence from the jury.

*Swift & Co. v. Rutkowski*, 182 Ill. 18.

General issue waives demurrer.

*C. & A. R. R. Co. v. Bell*, 209 Ill. 25.

*P. C. C. & St. L. Ry. Co. v. Robson*, 204 Ill. 254.

General issue waived objection that might have been raised by demurrer.

*Consolidated Coal Co. v. Bakamp*, 181 Ill. 9.

Misnomer in declaration should be raised by plea in abatement.

*Springfield Ry. Co. v. Hoeffner*, 175 Ill. 634.

General issue filed waives demurrer.

*C. & A. R. R. Co. v. Clausen*, 173 Ill. 100.

Ordinances should be specially pleaded.

*I. C. R. R. Co. v. Ashline*, 171 Ill. 313.

Appointment of administrator is not raised by general issue, special plea required.

*Hughes v. Richter*, 161 Ill. 409.

Misnomer is cured by general issue.

*C. & A. R. R. Co. v. Heinrich*, 157 Ill. 338.

General issue does not raise appointment as administrator—special plea required.

Union Ry. & T. Co. v. Shacklet, Admr., 119 Ill. 232.

General issue admits sufficiency of Narr.

C. & N. W. Ry. Co. v. Geebel, 119 Ill. 516.

Filing additional plea—when leave properly denied.

C. & E. I. R. R. Co. v. O'Connor, 119 Ill. 588.

General issue admits ownership and employment.

McNulta v. Lockridge, 137 Ill. 270.

(See also OWNERSHIP.)

General issue admits receivership, etc.

McNulta, Receiver, v. Ensck, 134 Ill. 47.

Confession and avoidance effect of.

C., B. & Q. Ry. Co. v. Bryan, 99 Ill. 126.

General issue after demurrer overruled waives demurrer.

I. & St. L. R. R. Co. v. Morgenstein, 106 Ill. 216.

Demurrer for duplicity should state facts showing duplicity.

Holmes v. C. & A. R. R. Co., 94 Ill. 439.

Plea to jurisdiction improper after general issue filed.

T. W. & W. R. R. Co. v. Beggs, 85 Ill. 80.

General issue puts in issue the question of marriage of deceased—may be shown by reputation.

Conant v. Griffin, Admr., 48 Ill. 410.

General issue—held not to traverse gross negligence.

I. C. R. R. Co. v. Read, 37 Ill. 485.

#### n. Instructions as to.

(See also INSTRUCTIONS.)

..Instruction—reference to declaration—good if declaration good.

I. C. R. R. Co. v. Elcher, 202 Ill. 556.

Malott, Receiver, v. Hood, 201 Ill. 202.

Baker & Reddick v. Summers, 201 Ill. 52.

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**a. As to Change of Venue.**

Change of venue—second application for is properly denied.

American Car Co. v. Hill, 226 Ill. 227.

Change of venue is properly asked after a cause has been reversed and remanded—counter affidavits—discussion of court—ordering in vacation.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9.

Change of venue—on motion for, the notary's jurat controls date of petition.

N. C. St. Ry. Co. v. Leonard, 167 Ill. 618.

Change of venue—from city court to city court—held proper.

E. St. L. C. Ry. Co. v. Enright, 152 Ill. 246.

Change of venue circuit to city court proper—party taking must pay cost of.

Lowry v. Coster, 91 Ill. 182.

Change of venue is discretionary where two petitions are filed.

Paul v. Barnes, 82 Ill. 228.

**b. As to Suing as a Poor Person.**

Suing as poor person—same rights as otherwise.

City of Bloomington v. Osterle, 139 Ill. 120.

Suing as poor person—minor may—discretion.

C. & I. R. R. Co. v. Lane, 130 Ill. 117.

**c. As to Leading Questions.**

Leading questions—when properly allowed.

Cobb Chocolate Co. v. Knudson, 207 Ill. 452.

Leading question—what is—held to be.

Springfield C. Ry. Co. v. Welsch, 155 Ill. 511.

Leading questions are discretionary with court.

Weber Wagon Co. v. Kehl, 139 Ill. 644.

Leading questions—proper where witness is hostile.

Flynn v. Fogarty, 106 Ill. 263.

**d. As to Continuance.**

Continuance when properly denied.

American Car Co. v. Hill, 226 Ill. 227.

Continuance—what necessary showing for.

Cobb Chocolate Co. v. Knudson, 207 Ill. 452.

Continuance—not for immaterial amendment.

Western Bridge Co. v. Meredith, 166 Ill. 306.

Continuance—affidavit for held insufficient.

Wolfe v. Johnson, 152 Ill. 280.

Continuance—new attorney in case—when sufficient ground for.

Pennsylvania Co. v. Rudel, 100 Ill. 603.



**e. As to Evidence.**

(See also EVIDENCE.)

**1. Burden of proof, etc.**

Burden of proof as to negligence is on plaintiff.

*Sack v. Dolese*, 137 Ill. 129.

Proof of appointment as administrator—not required unless special plea puts in issue.

*Union Ry. & T. Co. v. Shacklet, Admr.*, 119 Ill. 232.

Burden of proof is on plaintiff to show servant causing injury was incompetent.

*Stafford v. C., B. & Q. R. R. Co.*, 114 Ill. 244.

Burden of proof is on plaintiff to show defendant's negligence.

*C. & E. I. Ry. Co. v. Geary*, 110 Ill. 388.

Proof of material averments only, required.

*C., B. & Q. Ry. Co. v. Warner*, 108 Ill. 538.

Burden of proof in Dram Shop Act—shifted to defendant by proof of death caused by intoxication.

*Flynn v. Fogarty*, 106 Ill. 263.

Burden of—showing defendant's negligence—on plaintiff.

*C., B. & Q. Ry. Co. v. Harwood*, 90 Ill. 425.

**2. Allowing after case closed.**

Allowing new witness after case is closed—discretionary.

*C. C. Ry. Co. v. Matthieson*, 212 Ill. 292.

Allowing evidence after case closed—discretionary.

*C. C. Ry. Co. v. Carroll*, 206 Ill. 318.

Allowing evidence after case is closed—discretion.

*City of Sandwich v. Dolan*, 141 Ill. 432.

Holding case open for evidence, discretionary.

*I. C. R. R. Co. v. Slater*, 139 Ill. 190.

Allowing testimony after argument begun is discretionary with court.

City of Elgin v. Renwick, 86 Ill. 498.

### 3. Motion to exclude—admission of, etc.

Striking out answer to question—refusal of motion—when not error.

City of Chicago v. Jarvis, 226 Ill. 614.

Striking out competent evidence is cured if same facts are otherwise put in evidence.

C., R. I. & P. Ry. Co. v. Steckman, 224 Ill. 500.

Impeaching own witness—when improper.

C. C. Ry. Co. v. Gregory, 221 Ill. 591.

Repeatedly offering evidence ruled out is reversible error.

C. C. Ry. Co. v. Gregory, 221 Ill. 591.

Excluding evidence after its rebuttal by defendant—improper.

C. & E. I. R. R. Co. v. Schmitz, 211 Ill. 446.

Motion to exclude evidence—when properly denied.

So. Chicago City Ry. Co. v. McDonald, 196 Ill. 203.

Motion to exclude all the evidence on ground of variance, bad where the evidence tends to support any count.

Franklin P. & P. Co. v. Behrens, 181 Ill. 340.

I. C. R. R. Co. v. Welland, 179 Ill. 609.

Withdrawing improper question does not cure prejudice caused by.

I. C. R. R. Co. v. Sonders, 178 Ill. 585.

Admission of improper evidence is cured by motion to exclude, allowed.

C. & E. J. R. R. Co. v. Welch, 163 Ill. 305.

### 4. As to putting in evidence.

A witness should be allowed to explain his signature to a written statement.

Hirsh & Sons Iron & R. Co. v. Coleman, 227 Ill. 149.

Written statement of witness is part of defendant's case and should not be introduced on cross-examination—when and how introduced.

C. C. Ry. Co. v. Matthieson, 212 Ill. 292

Proving oral statement of witness made out of court—foundation.

I. C. R. R. Co. v. Wade, 206 Ill. 523.

Introducing written statement of witness—how done—foundation for.

I. C. R. R. Co. v. Wade, 206 Ill. 523.

Testimony of deceased witness at first trial—how proved at second trial.

I. C. R. R. Co. v. Ashline, 171 Ill. 313.

Deposition—reading although witness present at trial—proper.

Frink v. Potter, 17 Ill. 406.

## **5. Photographs as evidence.**

“X-Ray” photos—preliminary proof required for introduction of as evidence—taking to jury room not allowed.

C. & I. Elec. Co. v. Spence, 213 Ill. 220.

Photographs properly excluded where it does not appear the conditions shown by are the same as at time of injury.

Iroquois Furnace Co. v. McCrea, 191 Ill. 340.

Photographs—preliminary proof—held sufficient—reversed for excluding.

L. E. & W. Ry. Co. v. Wilson, Admx., 189 Ill. 89.

Photographs—preliminary proof required for.

C. C. C. & St. L. Ry. Co. v. Monaghan, 140 Ill. 474.

## **6. Rules of court as to practice.**

Rules of court as to—what are.

Anderson Pressed Brick Co. v. Sobkowiak, 148 Ill. 573.

Rules of court as to—when presumed to exist.

I. C. R. R. Co. v. Haskins, 115 Ill. 302.

**f. As to Argument of Attorney.**

(See also CONDUCT OF JUDGE OR ATTORNEY.)

**Limiting time for argument—when proper.**

**Christiansen v. Graver Tank Works**, 223 Ill. 142.

**Argument—great latitude should be allowed in.**

**N. C. St. Ry. Co. v. Anderson**, 176 Ill. 635.

**Withholding evidence—it is proper to comment on, in argument.**

**Consolidated Coal Co. v. Schelber**, 167 Ill. 539.

**Argument—limiting time of discretionary.**

**Monmouth M. & M. Co. v. Erling**, 148 Ill. 521.

**Opening statement—rules as to.**

**Marder, Luse & Co. v. Leavy**, 137 Ill. 319.

**Statement of counsel as to what he expects to prove—proper.**

**C. & A. R. R. Co. v. Fietsam**, 123 Ill. 518.

**When defendant may open and close.**

**C., B. & Q. Ry. Co. v. Bryan**, 90 Ill. 126.

**Improper remarks of attorney—duty of court—asked to restrain.**

**Hennies v. Vogel**, 87 Ill. 242.

**g. As to Bill of Exceptions.**

**Bill of exceptions.** Appellate court may approve act of judge in sealing, after time for, had expired—ministerial act not judicial.

**Chaplin v. Ill. T. R. R. Co.**, 227 Ill. 169.

**Error in refusing evidence—showing required in bill of exceptions to raise.**

**A. Ittner Brick Co. v. Ashby, Admr.**, 198 Ill. 562.

**Amending bill of exceptions after filing—how done—proper.**

**C., M. & St. P. Ry. Co. v. Walsh**, 150 Ill. 608.

Bill of exceptions—incorporating original in record by agreement, held proper.

*L. S. & M. S. Ry. Co. v. Hessions*, 150 Ill. 547.

Bill of exceptions—need not show leave to sue as poor person—when.

*C. & I. R. R. Co. v. Lane*, 130 Ill. 117.

Bill of exceptions—motion to strike from files is finally settled in trial court.

*Pennsylvania Co. v. Lynch*, 90 Ill. 333.

Bill of exceptions not necessary where the only question in the case is whether general verdict is inconsistent with special findings—when not inconsistent with general verdict.

*Dimick, Admr., v. C. & N. W. Ry. Co.*, 80 Ill. 338.

Bill of exception presumed to be a correct record of evidence admitted.

*C., B. & Q. Ry. Co. v. Lee*, 68 Ill. 576.

Seal not necessary on bill of exceptions—when.

*I. C. R. R. Co. v. Read*, 37 Ill. 485 (See Practice Act 1907).

#### **h. As to Cross-Examination.**

Where plaintiff calls defendant as a witness he may be examined fully, and cross-examined by plaintiff's counsel.

*North Amer. Rest. & Oyster House v. McElligott, Admr.*, 227 Ill. 317.

Recalling witness for further cross-examination—discretionary—when not reviewable.

*Hirsh & Sons Iron & R. Co. v. Coleman*, 227 Ill. 149.

Physical examination—not proper to ask witness on cross-examination if she will submit to it.

*City of Chicago v. McNally*, 227 Ill. 14.

Asking witness if he made a business of looking up damage cases.

*C. C. Ry. Co. v. Smith*, 226 Ill. 178.

Cross-examination where one defendant offers no evidence—of joint defendant's witness—proper.

Postal Tel.-Cable Co. v. Likes, 225 Ill. 249.

Where part of a conversation is brought out on cross-examination, the entire conversation may be had on re-direct.

C. C. Ry. Co. v. Lowitz, 218 Ill. 26.

Cross-examination as to past life of witness—competent as bearing on credibility.

C. C. Ry. Co. v. Uhter, 212 Ill. 174.

Cross-examination—great latitude is allowed where there is "possible faking."

C. U. T. Co. v. Miller, 212 Ill. 49.

Cross-examination—scope of—discretionary.

C. C. Ry. Co. v. Creech, 207 Ill. 400.

Cross-examination of physician as to his custom.

P. C. C. & St. L. R. R. Co. v. Banfile, 206 Ill. 553.

Cross-examination—held unduly restricted.

Ill. Steel Co. v. Ryska, 200 Ill. 280.

Cross-examination as to written statement. Statement may be identified, but questioning as to contents improper.

Momence Stone Co. v. Groves, 197 Ill. 88.

Recalling a witness for cross-examination is discretionary with court.

C. & A. R. R. Co. v. Eaton, Admr., 194 Ill. 441.

Cross-examination—scope of is largely discretionary with trial judge. In order to test knowledge of witness—what proper.

C., R. I. & P. Ry. Co. v. Rathbun, 190 Ill. 572.

Cross-examination—using to get in evidence of other accidents at same place—when proper.

C. & A. R. R. Co. v. Lewandowski, 190 Ill. 301.

Allowing counsel to cross-examine witness for no purpose except to entrap is discretionary with court.

City of Spring Valley v. Gavin, 182 Ill. 232.

Hostile witness—large freedom is given counsel in examining.

Consolidated Coal Co. v. Seinger, 179 Ill. 370.

Cross-examination must be pertinent to the issues of the case.

Central Ry. Co. v. Allmon, 147 Ill. 471.

Cross-examination as to prior health bad where not gone into on direct.

N. C. St. Ry. Co. v. Cotton, 140 Ill. 487.

Cross-examination—"whatever was covered in chief."

Tudor Iron Works v. Weber, 129 Ill. 535.

Cross-examination as to animus of witness toward party to suit—proper.

Schmidt v. Sinnott, 103 Ill. 160.

### **i. As to Rebuttal and Surrebuttal.**

Surrebuttal of contradictory statements by witness.

C. C. Ry. Co. v. Matthieson, 212 Ill. 292.

Redirect examination—not proper to ask witness who has testified that street car stopped at crossing long enough for passengers to alight, how long car stopped.

Ackerstadt v. C. C. Ry. Co., 194 Ill. 616.

Surrebuttal—when proper—rebutting evidence of plaintiff's physician in rebuttal.

City of Rock Island v. Starkey, 189 Ill. 515.

Rebuttal—when proper to refuse evidence in.

Washington Ice Co. v. Bradley, 171 Ill. 255.

Written statement of witness—when bad.

Swift & Co. v. Madden, 165 Ill. 41.

Rebuttal—evidence for should contradict.

C. & N. W. Ry. Co. v. Moranda, Admx., 108 Ill. 576.

**j. As to Verdict and Jury.**

(See also JURY AND JURORS.)

Challenges—each side has but three, though there be more than one party on one side.

North Amer. Rest. & Oyster House v. McElligott, Admr., 227 Ill. 317.

Dismissal as to one joint defendant after verdict, is proper and does not release the other defendant.

Postal Tel.-Cable Co. v. Likes, 225 Ill. 249.

Where verdict is that the servant or agent of defendant claimed to have been guilty of negligence, and jointly sued, is not guilty, the master is not liable.

Hayes v. Chicago Telephone Co., 218 Ill. 414.

Facts are settled after three trials with verdict for plaintiff each trial.

Hinchliff v. Rudnik, 212 Ill. 569.

Submitting case to jury on instructions as to facts involved does not waive motion to instruct for defendant.

I. C. R. R. Co. v. Swift, 213 Ill. 307.

Offering to prove—jury should retire when offer is made.

Henrietta Coal Co. v. Campbell, 211 Ill. 216.

Separation of jury—one member talking over 'phone, away from the others—when not harmful.

W. C. St. Ry. Co. v. Lundahl, 183 Ill. 284.

Taking pleadings to jury room—proper.

City of E. Dubuque v. Burlyte, 173 Ill. 553.

Of correcting form of verdict, or sending jury back—proper.

I. C. R. R. Co. v. Wheeler, 149 Ill. 525.

Returning verdict unsealed in envelope—bad.

C. C. C. & St. L. Ry. Co. v. Monaghan, 140 Ill. 474.

Jury—sending back after returning sealed verdict—proper when.

Consolidated Coal Co. v. Maehl, 130 Ill. 551.



Instructing jury by sending additional instructions to jury-room after retirement—held proper.

*City of Joliet v. Leoney*, 159 Ill. 471.

Instructing jury orally as to form of verdict—proper.

*I. C. R. R. Co. v. Wheeler*, 149 Ill. 525.

Motion to instruct jury does not raise question of the weight of evidence.

*I. C. R. R. Co. v. Harris*, 184 Ill. 57.

Instructing jury orally as to impropriety of certain way of arriving at a verdict disapproved.

*I. C. R. R. Co. v. Hammer*, 85 Ill. 526.

Practice as to impaneling jury—either party is entitled to have twelve men in the box before beginning examination of them—acceptance by panels by four.

*Sterling Bridge Co. v. Pearl*, 80 Ill. 251.

#### **k. As to Vacating Judgment—Default, Orders, etc.**

Setting aside judgment by default but allowing to stand as security—effect on execution and lien.

*Wenham et al. v. International Packing Co.*, 213 Ill. 397.

Motion to vacate judgment by default on call of calendar—force of affidavits submitted.

*Staunton Coal Co. v. Menk, Admr.*, 197 Ill. 369.

Default—force of—held not good where the declaration is fatally defective—judgment on may be set aside on motion at same term.

*Schueler v. Mueller*, 193 Ill. 402.

Entering orders during term of judgment—jurisdiction as to.

*C. & A. R. R. Co. v. Harrington*, 192 Ill. 9.

Reinstating case begun by one non compos mentis and dismissed by his attorney—when allowed on motion of conservator.

*Consolidated Coal Co. v. Oeltjen Coa.*, 189 Ill. 34.

**Vacating judgment at same term—proper.**

**A., T. & S. F. Ry. Co. v. Elder, 149 Ill. 173.**

**Correcting erroneous entry of judgment—how accomplished.**

**McNulta, Receiver, v. Ensich, 134 Ill. 47.**

**Default of plaintiff admits only facts properly pleaded.**

**C. & N. W. Ry. Co. v. Coss, 73 Ill. 394.**

**Default—when set aside—motion at same term.**

**Cox v. Brackett, 41 Ill. 222.**

(See PRACTICE ACT 1907.)

### **I. As to Motion in Arrest of Judgment.**

**Arrest of judgment—presumptions on motion for; are all in favor of the pleadings.**

**C. C. Ry. Co. v. Shreve, 226 Ill. 530.**

**Motion in arrest—when properly denied.**

**C. W. & V. Coal Co. v. Moran, 210 Ill. 9.**

**Lake St. "L" R. R. Co. v. Burgess, 200 Ill. 628.**

**Hartrich et al. v. Hawes, 202 Ill. 334.**

**Motion in arrest of judgment—misjoinder of counts not basis for.**

**C. & A. R. R. Co. v. Murphy, 198 Ill. 462.**

**Motion in arrest of judgment for want of an averment, when overruled.**

**Ill. Steel Co. v. Mann, 197 Ill. 186.**

**Motion in arrest of judgment raises the sufficiency of the declaration to support judgment.**

**Ide v. Fratcher, 194 Ill. 552.**

**Motion in arrest—proper and effective where the declaration is fatally defective in omitting a material allegation.**

**Schueler v. Mueller, 193 Ill. 402.**

Motion in arrest of judgment—properly refused.

Boyce v. Tallerman, 183 Ill. 115.

Motion in arrest—when properly denied.

B. & O. R. R. Co. v. Alsop, 176 Ill. 470.

Motion in arrest is properly refused if one count of declaration is good.

Swift & Co. v. Fue, 167 Ill. 443.

Motion in arrest—the presumptions are against.

Pennsylvania Co. v. Ellett, 132 Ill. 654.

Motion in arrest—when proper.

C. & E. I. R. R. Co. v. Mines, 132 Ill. 162 (Stearns v. Cope, 109 Ill. 346 disapp'd).

Arrest of judgment for insufficiency of declaration is waived where defendant demurs and pleads after demurrer overruled.

Quincy Coay Co. v. Hood, 77 Ill. 68.

#### **m. As to Motion for New Trial.**

New trial. Affidavit for held insufficient.

City of Chicago v. McNally, 227 Ill. 14.

Motion for new trial is necessary in order to save objection to evidence.

C., B. & Q. R. R. Co. v. Haselwood, 194 Ill. 69.

Motion for new trial and instruction must be incorporated in the bill of exceptions and be certified by the trial judge, certificate of clerk insufficient.

C., B. & Q. R. R. Co. v. Haselwood, 194 Ill. 69.

Motion for new trial—affidavits for must be served on counsel, otherwise they will not be considered.

C. C. Ry. Co. v. Anderson, 193 Ill. 9.

Motion for new trial—only questions stated in written points of, will be reviewed.

I. C. R. R. Co. v. Johnson, Admx., 191 Ill. 594.

Motion for new trial—affidavits of jurors to impeach verdict not allowed.

Heldmaier v. Rehor, 188 Ill. 458.

Motion for new trial—affidavits that newspapers contained an account of the trial not sufficient to sustain.

I. C. R. R. Co. v. Sonders, 178 Ill. 585.

New trial—when should be granted for improper conduct of attorney.

W. C. St. Ry. Co. v. Annis, 165 Ill. 475.

Motion for new trial—overruling of is assignable as error.

C. & A. R. R. Co. v. Heinrich, 157 Ill. 338.

Motion for new trial is not required to raise question of error in instructions.

I. C. R. R. Co. v. O'Keefe, 154 Ill. 508.

Motion for new trial—that juror talked with party to the suit is basis for—but injury must appear.

City of Beardstown v. Smith, 150 Ill. 169.

New trial not granted for merely cumulative or impeaching facts.

Wisconsin Central Ry. Co. v. Ross, 142 Ill. 9.

New trial—when not granted on the evidence.

Pennsylvania Co. v. Versten, 140 Ill. 637.

New trial—when granted on ground counsel talked with a juror.

M. & O. R. R. Co. v. Davis, 130 Ill. 146.

New trial—not for evidence merely cumulative and not conclusive.

City of Sterling v. Merrill, 124 Ill. 522.

New trial—properly denied after four verdicts for plaintiff.

City of Chicago v. Schmidt, 107 Ill. 186.

New trial for new evidence—due diligence must be shown.

Union Rolling Mill Co. v. Gillen, 100 Ill. 52.

New trial—right to not waived by asking judgment for defendant on special findings—when.

*C. & N. W. Ry. Co. v. Dimick, Admr.*, 96 Ill. 42.

New trial—motion for must be made at term of trial.

*C. & N. W. Ry. Co. v. Dimick, Admr.*, 96 Ill. 42.

New trial—two in same case. Practice Act, section 57, does not apply to reversal by appellate court.

*I. C. R. R. Co. v. Patterson*, 93 Ill. 290.

New trial—when not granted because of insufficient evidence.

*C., B. & Q. Ry. Co. v. Lee*, 87 Ill. 454.

A new trial is not given for new evidence merely cumulative.

*City of Elgin v. Renwick*, 86 Ill. 498.

New trial will not be granted where the jury could properly find their verdict though the court may think the verdict not justified.

*T. W. & W. Ry. Co. v. Moore*, 77 Ill. 217.

New trial—when granted—because evidence against verdict.

*I. C. R. R. Co. v. Chambers*, 71 Ill. 519.

New trial not given for merely cumulative evidence.

*Wormley v. Gregg*, 65 Ill. 251.

New trial—not for inconclusive newly-discovered evidence or to impeach.

*City of Chicago v. Hislop*, 61 Ill. 86.

New trial—not where credibility of witnesses is involved—for jury.

*C., B. & Q. Ry. Co. v. Stumps*, 55 Ill. 367.

New trial—not when evidence is conflicting—left to jury.

*City of Chicago v. Garrison*, 52 Ill. 516.

New trial—not unless verdict is so high as to produce conviction of improper motive.

*C., R. I. & P. Ry. Co. v. Otto*, 52 Ill. 416.

New trial—not granted where evidence is conflicting, though preponderance doubtful.

*Sheeran v. C. & M. R. R. Co.*, 48 Ill. 523.

New trial—not where evidence is conflicting.

*T. W. & W. R. R. Co. v. Hannon*, 47 Ill. 298.

New trial—given where exemplary damage allowed—when.

*Pierce v. Millay*, 44 Ill. 189.

New trial—unless verdict is clearly against the evidence, it should stand.

*C., R. I. & P. Ry. Co. v. McLean*, 40 Ill. 218.

New trial—not for merely cumulative evidence—affidavit must *state facts* as true.

*Ritchey v. West*, 23 Ill. 329.

#### **n. As to Beginning Over After Involuntary Non-Suit.**

Involuntary non-suit—what is—discussion of rule as to.

*Boyce v. Snow*, 187 Ill. 181.

Beginning over on involuntary non-suit must present same cause of action, hence where one has been non-suited for not filing declaration at second term, he cannot begin over as *no* cause had been stated.

*Gibbs v. Crane El. Co.*, 180 Ill. 191.

Involuntary non-suit—dismissal for want of declaration, under section 18, Practice Act, is.

*Gibbs v. Crane El. Co.*, 180 Ill. 191.

Non-suit involuntary and voluntary what are.

*Holmes v. C. & A. R. R. Co.*, 94 Ill. 439.

#### **o. In Appellate and Supreme Courts.**

(See also APPEALS—APPELLATE COURT.)

Remittitur does not cure the admission of evidence that plaintiff had a wife and children.

*Jones & Adams Co. v. George*, 227 Ill. 64.

Deciding case on merits—when appellate court does—how determined.

Wenham et al. v. International Packing Co., 213 Ill. 397.

Appellate court—force of order remanding with directions.

Wenham et al. v. International Packing Co., 213 Ill. 397.

Remanding is unnecessary where appellate court reverses because of a bar to the action.

Papke v. Hammond Co., 192 Ill. 631.

When case is reversed in the supreme court.

Supple v. Agnew, 191 Ill. 439.

Rules and procedure when appellate court reverses judgment without remanding and finds the facts different from jury.

Hogan v. City of Chicago, 168 Ill. 551.

Of allowing remittitur in appellate court approved—held costs should be taxed to plaintiff.

Elgin City Ry. Co. v. Salisbury, 162 Ill. 187.

Allowing remittitur in appellate court—proper.

C., M. & St. P. Ry. Co. v. Walsh, 157 Ill. 672.

Supreme court will examine the facts to see if they tend to support verdict.

C. & A. R. R. Co. v. Heinrich, 157 Ill. 388.

Remittitur in appellate court—proper—cases reviewed.

N. C. St. Ry. Co. v. Wrixon, 150 Ill. 532.

Points not raised in appellate, waived in supreme court.

N. C. St. Ry. Co. v. Wrixon, 150 Ill. 532.

Reversal without remanding—when improper.

Neer v. I. C. R. R. Co., 138 Ill. 30.

In supreme court—vacating judgment entered by mistake.

Stafford v. C., B. & Q. R. R. Co., 114 Ill. 244.

Remittitur to avoid new trial—proper.

Union Rolling Mill Co. v. Gillen, 100 Ill. 52.

Practice in supreme court—on remittitur each party required to pay his own costs.

C., B. & Q. R. R. Co. v. Dickson, 38 Ill. 431.

**p. As to Removing Cause to Federal Court.**

Removal of cause to federal court—refusal of—how question is saved.

Pierce, Receiver, v. Walters, 164 Ill. 590.

Removal of cause to federal court—when not allowed.

Pennsylvania Co. v. Versten, 140 Ill. 637.

Removal of cause to federal court—basis for.

C. C. C. & St. L. Ry. Co. v. Monaghan, 140 Ill. 474.

Removal of cause to United States court—requisites of petition.

Northern L. Packet Co. v. Binninger, 70 Ill. 571.

**q. Miscellaneous Holdings.**

Where statute of another state is adopted in Illinois, the presumption is the interpretation of it made in that state is also adopted, unless in conflict with Illinois law.

Rhoads v. C. & A. R. R. Co., 227 Ill. 328.

Deposition—defects in form of questions and answers is reached by motion to suppress; competency by objection at the time deposition is read.

I. C. R. R. Co. v. Panebianco, 227 Ill. 170.

When case is tried by court without jury.

Pratt v. Davis, 224 Ill. 300.

Motion to supply lost plea—must be at term of judgment.

Cox v. Brackett, 41 Ill. 222.

Remittitur may cure admission of evidence as to damages.

T. W. & W. R. R. Co. v. Beals, 50 Ill. 150.

Depositions—objections to must be made before trial.

T. W. & W. R. R. Co. v. Baddeley, 54 Ill. 19.



No exception allowed to instruction given by agreement of both sides.

**Emory v. Addis**, 71 Ill. 273.

Exception to instructions must be taken at the time instruction is offered—exception taken on motion for new trial, sufficient.

**I. C. R. R. Co. v. Modglin**, 85 Ill. 481.

Appointment of a receiver after case begun does not affect case.

**T. W. & W. R. R. Co. v. Beggs**, 85 Ill. 80.

Hypothetical questions—when bad—rules as to.

**C. C. Ry. Co. v. Bundy**, 210 Ill. 39.

**C. & A. R. R. Co. v. Howell**, 208 Ill. 155.

Reading law to jury is improper in personal injury case, for illustration or otherwise.

**City of Chicago v. McGiven**, 78 Ill. 347.

Appointment of administrator—when may be questioned.

**I. C. R. R. Co. v. Cragin**, 71 Ill. 177.

Exhibiting wound to jury—proper (see Evidence).

**C. T. T. R. R. Co. v. Kotoski**, 199 Ill. 383.

Motion to tax costs—when too late in upper court.

**Himrod Coal Co. v. Clark**, 197 Ill. 514.

Changing place of case on general docket is not reversible error—discretionary.

**Staunton Coal Co. v. Menk, Admr.**, 197 Ill. 369.

In action against receiver—procedure.

**Knickerbocker v. Benes**, 195 Ill. 434.

Dismissal of case against one of two joint defendants, by order of court, after the arguments of counsel, held reversible error.

**Consolidated Fire Works Co. v. Koehl**, 190 Ill. 145.

Bond for costs when action is by minor is not jurisdictional.

**Consolidated Coal Co. v. Gruber**, 188 Ill. 584.

**Declaration**—when an amended declaration is filed, the original declaration is out of the case.

*Consolidated Coal Co. v. Gruber*, 188 Ill. 584.

**Bond for costs in action by next friend**—not.

*B. & O. S. Ry. Co. v. Keck*, 185 Ill. 400.

**Exhibiting injury to jury**—not improper.

*C. & A. R. R. Co. v. Clausen*, 173 Ill. 100.

**Hysterical explanations of plaintiff at trial**—force of.

*C. & E. J. R. R. Co. v. Meech*, 163 Ill. 305.

**Hypothetical question may be based on facts not in evidence.**

*W. C. St. Ry. Co. v. Fishman*, 169 Ill. 196.

**Reading railroad rule to witness**—held improper—when.

*C. & A. R. R. Co. v. Logue*, 158 Ill. 621.

**Trying case out of its regular order**—proper when.

*Pennsylvania Coal Co. v. Kelly*, 156 Ill. 9.

**Experiments made before jury**—when proper.

*Pennsylvania Coal Co. v. Kelly*, 156 Ill. 9.

**What proper where demurrer to declaration overruled.**

*J. A. & N. Ry. Co. v. Velle*, 140 Ill. 60.

**Execution against city**—rules as to.

*City of Flora v. Naney*, 136 Ill. 45.

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*City of Chicago v. Schmidt*, 107 Ill. 186.

**PRESUMPTIONS.**

**Master cannot presume servant will appreciate latent danger—he should warn him.**

*Postal Tel.-Cable Co. v. Likes*, 225 Ill. 249.

**Travelers may presume streets are safe.**

*Village of Palestine v. Siler Admr.*, 225 Ill. 630.

*City of Spring Valley v. Gavin*, 162 Ill. 232.

**Master may presume servant will exercise ordinary intelligence.**

*I. C. R. R. Co. v. Swift*, 213 Ill. 307.

**Motorman may presume passengers have alighted from car on adjacent track when such car stopped long enough for that purpose.**

*Ackerstadt v. C. C. Ry. Co.*, 194 Ill. 616.

**Is that city has notice of excavation in street where it caused the excavating to be done.**

*City of Salem v. Webster*, 192 Ill. 369.

**Where appellate court reverse without remanding and do not find as to facts, the presumption is that they reversed on a question of law, and did not find the facts different.**

*Supple v. Agnew*, 191 Ill. 439.

**One crossing railroad tracks may presume flagman will give warning of danger.**

*C. & A. R. R. Co. v. Blaul*, 175 Ill. 183.

**Not that a variance exists.**

*C. & A. R. R. Co. v. Clausen*, 173 Ill. 100.

**None is indulged to excuse failure to inspect—by master.**

*C. & N. W. Ry. Co. v. Gillison*, 173 Ill. 264.

**Motorman may presume child on sidewalk will not suddenly run into street.**

*Rack v. C. C. Ry. Co.*, 173 Ill. 289.

Servant may presume premises safe if not put on notice of danger.

Whitney & S. Co. v. O'Rourke, 172 Ill. 177.

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C. & A. R. R. Co. v. Maroney, 170 Ill. 521.

Negligence is presumed from prohibited speed of train, violating ordinance.

I. C. R. R. Co. v. Ashline, 171 Ill. 313.

Knowledge by master of defect in scaffolding when presumed.

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Ebsery v. C. C. Ry. Co., 164 Ill. 518.

That there was negligence because there is injury is never presumed.

Hart v. Washington Park Club, 157 Ill. 9.

Incompetency of servant is not presumed from fact that his negligence caused accident.

M. & O. R. R. Co. v. Godfrey, 155 Ill. 78.

Is that the jury based their verdict on the proof as made.

C. & G. T. Ry. Co. v. Gaelnowski, 155 Ill. 189.

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Joliet Steel Co. v. Shields, 146 Ill. 603.

Re-enactment of statute when presumed.

Catlett v. Young, 143 Ill. 74.

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Pennsylvania Co. v. Ellett, 132 Ill. 654.

Is never that servant has knowledge of danger.

C. & E. I. Ry. Co. v. Hines, 132 Ill. 162.

Are that second marriage is valid.

Coal Run Coal Co. v. Jones, Admx., 127 Ill. 378.

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C. W. D. Ry. Co. v. Mills, 91 Ill. 39.

## PRIMA FACIE CASE.

(See also EVIDENCE.)

Prima facie case not proven—passenger on street car injured.

C. U. T. Co. v. Mee, 218 Ill. 9.

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C. M. T. Co. v. Reuter, 210 Ill. 279.

Ill. T. Ry. Co. v. Thompson, 210 Ill. 226.

Under valid ordinance—what sufficient showing.

U. S. Brewing Co. v. Stoltenberg, 211 Ill. 531.

What is—held shown—*res ipsa loquitur*.

C. & E. I. Ry. Co. v. Reilly, 212 Ill. 506.

Held shown—passenger injured in collision.

Elgin A. & S. T. Co. v. Wilson, 217 Ill. 47.

What necessary to prove against master.

McCormick H. Mach. Co. v. Zakzewski, 220 Ill. 522.

What is in case under automobile Act of 1903.

Ward v. Meredith, 220 Ill. 66.

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L. E. & W. Ry. Co. v. Wilson Admx, 189 Ill. 89.

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Springer v. Ford, 189 Ill. 430.

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Howe v. Medaris, 183 Ill. 288.

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Hartford Deposit Co. v. Sullott, 172 Ill. 222.

Rule as to proof required to shown.

C. & A. R. R. Co. v. Scanlan, 170 Ill. 106.

What constitutes where passenger is thrown to ground by clothes catching in car while alighting—shown.

*N. C. St. Ry. Co. v. Eldridge*, 151 Ill. 543.

What must be shown by plaintiff—leading case—scaffolding fell.

*Goldie v. Werner*, 151 Ill. 552.

What is—woman killed crossing railroad tracks.

*C. C. C. & St. L. Ry. Co. v. Baddeley*, 150 Ill. 328.

What constitutes—stock shipper injured.

*Hawk v. C. B. & Q. Ry. Co.*, 147 Ill. 399.

*I. C. R. R. Co. v. Nowicki*, 148 Ill. 29.

Collision of street cars in tunnel makes—passenger injured.

*N. C. St. Ry. Co. v. Cotton*, 140 Ill. 487.

What is—mine accident.

*Consolidated Co. v. Wombacher*, 134 Ill. 64.

What necessary to prove—injury by incompetent servant.

*U. S. Rolling Stock Co. v. Wilder*, 116 Ill. 100.

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*Flynn v. Fogarty*, 106 Ill. 263.

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*Eagle Packet Co. v. Defries*, 94 Ill. 598.

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*Diamond Glue Co. v. Wielzychowski*, 227 Ill. 338.

Proof of injury is prima facie case where passengers are injured—burden of railroad company to show itself not to blame.

*P. P. & J. R. R. Co. v. Reynolds*, 88 Ill. 418.

What is prima facie evidence of defendant's negligence—explosion of engine.

*T. W. & W. Ry. Co. v. Moore*, 77 Ill. 217.

Prima facie case in action for death of a person.

*Quincy Coal Co. v. Hood*, 77 Ill. 68.

**Prima facie case—what necessary.**

**C. B. & Q. Ry. Co. v. Gregory, 58 Ill. 272.**

**Derailment of train is prima facie case of negligence.**

**P. C. & St. L. Ry. Co. v. Thompson, 56 Ill. 138.**

**Explosion of locomotive is prima facie proof of negligence.**

**I. C. R. R. Co. v. Phillips, 49 Ill. 234.**

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**C. B. & Q. Ry. Co. v. Dewey Admx. 26 Ill. 255.**

**PROMISE TO REPAIR—FORCE OF.**

Servant may rely on if he knew promise had been made; although it had not been made to him.

Chicago Drop Forge & F. Co. v. Van Dam, 149 Ill. 337.

Odin Coal Co. v. Tadlock, 216 Ill. 624.

By foreman—negatives contributory negligence—when.

Donley v. Dougherty, 174 Ill. 582.

Swift & Co. v. O'Neill, 187 Ill. 337.

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Effect of—servant may continue reasonable time—rule.

Ill. Steel Co. v. Mann, 170 Ill. 200.

Gunning System v. Lapointe, 212 Ill. 274.

What is—defective switch on tramway in factory—force of.

Swift & Co. v. Madden, 165 Ill. 41.

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Anderson Pressed Brick Co. v. Sobkowiak, 148 Ill. 573.

Force of—is a fact for jury.

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Leaving clay pile attractive to children near track not shown to be—child killed.

*Seymour v. Union S. & T. Co.*, 224 Ill. 579.

When absence of gates at crossing is.

*C. & A. R. R. Co. v. Averill*, 224 Ill. 516.

High speed of street car shown to be—collision of cars, passenger injured.

*C. C. Ry. Co. v. Pural*, 224 Ill. 686.

When defendant's negligence is, contributory negligence is excused.

*Star Brewery Co. v. Houck*, 222 Ill. 348.

Failure to warn of danger held to be—no bell at railroad crossing.

*E. J. & E. Ry. Co. v. Hoadley, Admx.*, 220 Ill. 463.

Of fear and fright as, of injury, held not shown.

*So. Chicago City Ry. Co. v. Kinnare, Admr*, 216 Ill. 451.

Defendant's negligence not shown to be—no recovery.

*Burke v. Hulett, Admr*, 216 Ill. 545.

Evidence showing defendant's negligence was not—horse ran away.

*Wabash R. R. Co. v. Billings*, 212 Ill. 37.

Failure to warn shown to be—workman struck by traveling crane.

*Shickle-Harrison & H. Iron Co. v. Beck*, 212 Ill. 268.

Of explosion—what is competent evidence of.

*I. C. R. R. Co. v. Prickett*, 210 Ill. 140.

What is sufficient evidence to show that remote cause is.

*Garibaldi & Cuneo v. O'Connor*, 210 Ill. 284.

Defect alleged—held to be.

*Missouri Mall. Iron Co. v. Dillon*, 206 Ill. 145.

What is sufficient proof of.

C. & A. R. R. Co. v. Wise, 206 Ill. 453.

Need not be shown where passenger injured.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

Plaintiff's negligence shown to be—bicyclist ran into street car.

N. C. St. Ry. Co. v. Cossar, 203 Ill. 608.

Defect as—of injury—shown.

Chicago Screw Co. v. Weiss, 203 Ill. 536.

General test and rule as to what is.

Armour v. Golkowska, 202 Ill. 144.

Defendant's negligence held to be.

True & True Co. v. Woda, Admx, 201 Ill. 315.

That injury was, of death—shown—deceased fell upon track unconscious and was hit by train.

Martin, Admr., v. C. & N. W. Ry. Co., 194 Ill. 138.

High speed of train held to be—ran into trolley car crossing track—motorman drunk.

C. & E. I. R. R. Co. v. Moshell, 193 Ill. 208.

Leaving switch open after placing cars on—held to be.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9.

Intoxication must be shown to be under Dram Shop Act.

Shorb v. Webber, 188 Ill. 126.

Absence of sufficient fire escapes shown to be—doctrine as to.

Landgraf v. Kuh, 188 Ill. 484.

Is a question of fact where there is any evidence tending to show that the negligence charged was.

N. C. St. Ry. Co. v. Dudgeon, 184 Ill. 477.

Swift & Co. v. Rutkowski, 182 Ill. 18.

Finding in appellate court that injury alleged was not, is conclusive as to right of recovery—a question of fact.

Coker v. Wabash R. R. Co., 183 Ill. 223.

What necessary to show negligence to be.

*City of Dixon v. Scott*, 181 Ill. 116.

May be one of several causes—if without the negligence alleged the injury would not have occurred, it is—fact for jury.

*American Ex. Co. v. Risley*, 179 Ill. 295.

Of death—when not material where street car ran into wagon injuring driver.

*W. C. St. Ry. Co. v. Foster*, 175 Ill. 396.

Is a question of fact for the jury—street car collision.

*W. C. St. Ry. Co. v. Feldstein*, 169 Ill. 139.

*City of Pekin v. McMahon*, 154 Ill. 141.

Defined—delivery wagon backed against barber pole, knocking it over upon plaintiff who was passing.

*L. Wolff Mfg. Co. v. Wilson*, 152 Ill. 9.

Intoxication must be shown to be in dram shop case,—question of fact.

*Meyer v. Butterbrecht*, 146 Ill. 131.

When negligence and accident combine—person negligent is liable for injury.

*City of Joliet v. Shufeldt*, 144 Ill. 403.

Negligence must be shown to be—of injury.

*Gibson v. Leonard*, 148 Ill. 184.

What is where defective valve allowed oil to escape and catch fire from burning tank.

*Pullman Palace Car Co. v. Laack*, 143 Ill. 243.

Negligence charged must be shown to be.

*City of Mt. Carmel v. Howell*, 137 Ill. 81.

Negligence charged must be shown to be.

*L. S. & M. S. Ry. Co. v. Parker*, 131 Ill. 557.

Proximate cause—when liquor sold is—of intoxication—distinguishing between sale and gift of liquor.

*Brannan v. Adams*, 76 Ill. 331.

Proximate cause—negligence must be shown to be.

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**RAILROAD ACCIDENTS.**

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**a. Alighting From Train.**

**Alighting from moving train.** Passenger attempted to alight from moving train at platform on dark night—no lights. Someone shouted "all right" and plaintiff stepped off. Contributory negligence. Judgment for defendant. *Affirmed.*

*Harvey v. C. & A. Ry. Co.*, 221 Ill. 242 (4-06).

**Got off wrong place—hit by train.** Passenger, boy fourteen years old, injured while walking back to depot on opposite track. Train ran past before stopping, another train came up behind. Bell rung, whistle blown. Judgment for plaintiff. Reversed and remanded for erroneous instruction saying what would be negligence.

*Ill. Cent. R. R. Co. v. Johnson*, 221 Ill. 42 (4-06).

**Alighted from moving car on advice of conductor.** Passenger sixty-five years old attempted to alight from car at a place not a regular stopping place, and was thrown off by train start-

ing. Conductor had advised him to alight there. Judgment \$1,750. Affirmed.

*B. & O. S. Ry. Co. v. Mullen*, 217 Ill. 203 (10-05).

**Alighting as train started up.** Passenger on defendant's train, attempted to get off as train was starting up. Conflict as to train stopping long enough for plaintiff to alight. Judgment \$4,000. Reversed and remanded for erroneous instruction as to credibility.

*C. & A. R. R. Co. v. Kelley Admr.* 210 Ill. 449 (6-04).

**Thrown down by train suddenly starting.** Passenger alighting from train, was thrown to platform by sudden starting of the car. Judgment for plaintiff. Affirmed.

*C. & E. I. R. R. Co. v. Wallace*, 202 Ill. 129 (4-03).

**Thrown down—train suddenly started.** Lady fifty-nine years old was passenger. Was thrown off train as she was alighting, by sudden starting of the car. Judgment \$2,000. Affirmed.

*C. & E. I. Ry. Co. v. Stormont*, 190 Ill. 43 (4-01).

**Passenger alighting—train suddenly started—thrown down—ankle and foot broken—head injured.** What damage must be alleged. Judgment for plaintiff. Affirmed.

*B. & O. S. W. Ry. Co. v. Slanker*, 180 Ill. 357 (6-99).

**Alighting from train.** Passenger alighting from train—suddenly started, throwing her to ground—statute of limitations. Judgment \$20,000. Reversed and remanded because of remarks of court.

*Ill. C. Ry. Co. v. Sonders*, 178 Ill. 585 (2-99).

**Stockman riding on freight train.** Thrown down while alighting at the suggestion of conductor. Judgment for plaintiff. Affirmed.

*C. & A. R. R. Co. v. Winters*, 175 Ill. 294.

**Alighting from railroad train—struck by another train.** Train stopped in middle of street some distance from depot.

Passenger alighted and was hit by an engine on another track. Left foot crushed. Judgment for plaintiff. Affirmed.

Pennsylvania Co. v. McCaffrey, 173 Ill. 168.

**Getting off railroad train—thrown to ground and injured.** Passenger. Judgment for plaintiff. Affirmed.

C. & A. R. R. Co. v. Clausen, 173 Ill. 100.

**Getting off railroad train—stopped short of station.** Brake-man had announced station. Thrown to ground. Demurrer to declaration sustained. Reversed and remanded by supreme court.

Ward v. C. & N. W. Ry. Co., 165 Ill. 462.

**Passenger slipped while alighting and fell under railroad car.** Finger cut off. Judgment \$1,000. Affirmed.

C. & N. W. Ry. Co. v. Smith, 162 Ill. 185.

**Alighting from railroad train at unusual place.** Train was past station and slowed up. Conductor forced passenger to get off the moving train. Fell and was injured. Conflict as to forcing off. Judgment for defendant. Affirmed.

HoeHN v. C. P. & St. L. Ry. Co., 152 Ill. 224.

**Alighting from railroad train—started suddenly throwing passenger to ground.** Judgment \$3,000. Affirmed.

C. & A. R. R. Co. v. Byrum, 153 Ill. 131.

**Alighting from train.** Man seventy years of age on crutches thrown from step of car by jerk of train. Conflict of evidence as to how accident happened. Mental faculties impaired—rendered incapable of work. Judgment \$6,000. Affirmed.

I. C. R. R. Co. v. Wheeler, 149 Ill. 525.

**Getting off railroad train.** Sudden jerk threw plaintiff under car. Was a passenger. Conductor had agreed to stop to let him off. Train was moving—plaintiff stood on step. Carpenter. Judgment \$5,000. Affirmed.

Pennsylvania Co. v. Versten, 140 Ill. 637.

**Alighting from train.** Conflict of testimony as to injury. Plaintiff's case was that car stopped and jerked ahead just as he was about to alight. Judgment \$5,000. Affirmed.

*L. E. & W. R. R. Co. v. Morain*, 140 Ill. 118.

**Getting off railroad train at station.** Sudden jerk threw passenger to ground. Conflict on many material points. Not regular stopping place for this train. Judgment \$2,500. Affirmed but case sent back to circuit court for new entry of judgment upon verdict.

*McNulta v. Ensich*, 134 Ill. 47.

**Alighting from railroad car.** Passenger thrown down by jerk and injured so that he died after beginning suit: before trial. Suit continued by administrator. Judgment \$1,400. Affirmed.

*C. & A. R. R. Co. v. Bonifield*, 104 Ill. 223.

**Alighting from moving train.** Passenger was carried by his station. Jumped off while the train was going fifteen miles an hour and was injured. Judgment for defendant affirmed.

*Dougherty v. C. B. & Q. Ry. Co.*, 86 Ill. 467.

**Alighting from train.** Passenger injured. Attempted to get off while the train was in motion, thinking the train would not stop. Judgment for plaintiff. Reversed because of contributory negligence.

*I. C. R. R. Co. v. Chambers*, 71 Ill. 519.

**Alighting from train.** Lady thrown down and severely injured by the sudden starting of the train as she was getting off—spine injured. This action was brought by the husband and wife jointly. Judgment \$325. Reversed on the ground that the husband could not be joined with the wife in an action for personal injury to wife,—she must sue alone.

*C. & N. W. Ry. Co. v. Button*, 68 Ill. 409.

**Alighting from moving train.** Plaintiff was carried past his station by train that did not stop. Attempted to get off; fell

and was injured. Judgment for plaintiff. Reversed because jury each wrote amount of damage he would allow on slip of paper, the sum of which divided by twelve was allowed. Practice held reversible. Affidavit of officer in charge of jury proved the fact.

I. C. R. R. Co. v. Able, 59 Ill. 131.

**Passenger attempting to alight after train started up.** Thrown under cars and killed. Had remained in car while train stopped for passengers to alight. Did not leave until train started. Judgment for plaintiff. Reversed, due care not shown—defendant's negligence not shown.

I. C. R. R. Co. v. Slatton, 54 Ill. 133.

**Alighting from train.** Passenger thrown down by starting of train. Arm amputated. Nervous shock. Injury to mind. Judgment \$5,000. Affirmed.

T. W. & W. R. R. Co v. Baddeley, 54 Ill. 19.

**Jumping off moving train.** Conductor agreed to run train slowly to allow passenger to jump off at station where train did not stop. Plaintiff jumped and was injured. Judgment \$1,200. Reversed for refusal of instruction as to due care.

C. & A. R. R. Co. v. Randolph, 53 Ill. 510.

**Alighting from moving train.** Plaintiff was passenger. Conductor advised him not to attempt to get off. Arm crushed. Judgment \$3,000. Reversed because due care not shown.

O. & M. R. R. Co. v. Schlebe, 44 Ill. 460.

**Alighting from moving train.** Sudden jerk threw passenger to ground; no railings on car. Leg fractured; ankle dislocated. Lawyer. Conductor had slackened train for plaintiff. Judgment \$11,000. Reversed because of excessive damages and contributory negligence.

C. B. & Q. Ry. Co. v. Hazzard, 26 Ill. 373.

**Passenger jumped off car** (same case as 15 Ill. 468, on second appeal). Judgment \$2,500. Reversed because of instruction



saying certain facts did not constitute contributory negligence, and remanded. Instructions set out in full.

G. & C. U. R. R. Co. v. Yarwood, 17 Ill. 509.

### **b. Low Bridge—Knocked Off Car**

**Brakeman knocked off car by viaduct** which was built too low. No whipping straps. Railroad company was running an extra high car on which brakeman was standing. Smoke hid bridge. No lights. Judgment \$4,000. Affirmed.

C. & A. R. R. Co. v. Matthews, 153 Ill. 268.

**Brakeman knocked off car and killed.** Head struck angle iron of bridge. Car was of unusual height. No whipping straps before the bridge. Bridge not as high as usual. Judgment \$2,000. Affirmed.

C. C. C. & St. L. Ry. Co. v. Walter, 147 Ill. 60.

**Brakeman on top of car struck bridge constructed too low.** Judgment for plaintiff. Affirmed.

C. & A. R. R. Co. v. Johnson, 116 Ill. 206.

**Brakeman riding on freight car struck by bridge constructed too low.** Judgment \$2,500. Affirmed.

Wabash Ry. Co. v. Elliott, 98 Ill. 481.

**Viaduct—employee riding on top of car—head struck.** Section hand riding home on box car provided by defendant. Car crowded so he rode on top. Head struck edge of viaduct knocking him off. Had not been warned as to viaduct and did not know. Judgment \$5,000. Affirmed.

Chicago Tr. Co. v. O'Donnell, Admr., 213 Ill. 545 (2-05).

### **c. At Crossings.**

**Crossing accident—automobile struck by train.** Bell rung and whistle blown. Deceased stopped and looked and listened.

Track on an embankment up which automobile ran. Next of kin sued; brothers and sisters. Judgment \$1. Affirmed.

*Rhoads v. C. & A. R. R. Co.*, 227 Ill. 328.

**Crossing track—confused—clear view.** Lady sixty years of age struck by third rail train while crossing track. Started to cross, stopped, got confused and started back. Motorman blew whistle and did all he could to stop. View unobstructed. Judgment for plaintiff. Reversed and remanded because of instruction as to willful negligence.

*A. E. & C. Ry. Co. v. Gary*, 221 Ill. 29 (4-06).

**Crossing tracks—gateman—hard of hearing.** Watchman at railroad crossing, appointed by mayor, paid by defendant. Hard of hearing, and was muffled against cold. While crossing track to get to his shanty engine struck. Conflict as to bell and whistle. Judgment \$1,593. Reversed and remanded in supreme court because of instruction as to care required of partially deaf man.

*Toledo P. & W. Ry. Co. v. Hammett*, 220 Ill. 9 (2-06).

**Crossing—drove on after train passed—backed up.** Plaintiff drove his horse onto the track to cross after engine passed. Engine backed down frightening horse. Ran away throwing plaintiff out. Judgment \$5,000. Remitted \$2,000. Reversed and remanded because of variance as to how accident happened.

*Wabash Ry. Co. v. Billings*, 217 Ill. 37 (10-04).

**Crossing tracks—gates up—lessor and lessee.** Owning and leasing companies sued jointly. Plaintiff was crossing a series of tracks to get to station to board car. Gates up. Looked both ways. While on last track was struck by engine. No bell or whistle. Judgment (joint) \$12,500. Affirmed.

*C. & E. I. Ry. Co. et al v. Coggins*, 212 Ill. 369 (12-04).

**Woman crossing series of tracks.** Eight tracks crossed in public street. Plaintiff (woman) was seeking to cross. Had

passed four tracks. Waited for south train to pass, moved forward and was struck by north-bound train. The gates were raised before she started ahead. No warning of approach of train. Judgment for plaintiff. Affirmed.

C. & E. I. R. R. Co. v. Schmitz, 211 Ill. 446 (10-04).

**Pedestrian struck at crossing—gates up.** No facts. See 110 Ill. App. 553.) Lady hit by locomotive while attempting to cross series of tracks—dark night—no bell—gates up. Judgment \$7,000. Affirmed.

C. & E. R. R. Co. v. Zapp, 209 Ill. 339 (4-04).

**Crossing track—high speed.** Minor, eighteen years old, was hauling ice from car to ice house. Stood up in wagon while crossing track. Ears muffled. Limited train at prohibited speed hit wagon. Judgment \$1,500. Affirmed.

C. & A. R. R. Co. v. Pulliam, 208 Ill. 456 (2-04).

**Crossing accident.** Plaintiff was struck by engine at crossing. Judgment \$2,000. Reversed and remanded for failure to submit special interrogatories to opposing counsel.

P. C. C. & St. L. R. R. Co. v. Smith, 207 Ill. 486 (2-04).

**Crossing accident—high speed—gates up.** Plaintiff was going to work at 6:20 A. M., was struck at crossing by train going at high speed. No bell. Gates up. View obstructed by cars on sidetrack. Judgment \$20,000. Affirmed.

P. C. C. & St. L. Co. v. Banfile, 206 Ill. 553 (12-02).

**Collision—engine and wagon—switchman on foot-board hurt.** Foreman of switch gang. Gang was taking out engine, plaintiff riding on front foot-board of engine. No bell or whistle. View obscured by cars on side track. Wagon collided with engine striking plaintiff. Gates up. Thigh fractured. Judgment \$8,500. Affirmed.

C. & A. R. R. Co. v. Wise, 206 Ill. 453 (12-03).

**Crossing accident—crossing behind line of cars.** Deceased was employed by a coal company. Was crossing tracks in the

coal company's yard when engine "kicked" a car against a line of cars behind which plaintiff was crossing. He did not know car had been kicked back but had been warned that switching was being done. Judgment \$5,000. Affirmed.

Chicago Junction R. R. Co. v. McGrath, Admr., 203 Ill. 511 (6-03).

**Collision at railroad crossing—ribs broken and two fingers cut off.** Switchman of Wabash road was assisting in moving train of cars out of yard. Train to cross C. & A. tracks. Had right of way. C. & A. engine ran into train. Plaintiff knocked off of car. Four ribs broken—two fingers cut off. Judgment \$3,500. Affirmed.

C. & A. R. R. v. Ralby, 203 Ill. 310 (6-03).

**Crossing accident—view obstructed.** Plaintiff struck by engine at crossing. View obstructed by cars on side track. High speed. No bell or whistle. Gates up. Conflict on every point. Judgment \$3,000. Reversed and remanded for the admission of hearsay evidence.

C. & E. J. R. R. Co. v. Donworth, 203 Ill. 192 (6-03).

**Crossing accident—train backed after passing.** Plaintiff was crossing track in a buggy. View obstructed by freight car. Waited for engine to pass, started to cross when engine backed up and struck him. No warning of backing up. Judgment \$1,500. Affirmed.

C. & E. I. R. R. Co. v. Randolph, 199 Ill. 126.

**Crossing accident at midnight—obstructed view.** Deceased was riding in buggy. Was hit by work train at midnight while crossing track. No bell or whistle. Tall weeds obstructed view. Judgment \$2,000. Affirmed.

C. & E. I. R. R. Co. v. Beaver, Admr, 199 Ill. 34 (10-02).

**Crossing accident—country road.** Deceased killed at crossing of country road. No bell or whistle—high speed. View obscured by hedge fence and field of corn. Stopped and listened before crossing. Knew train was about due. Judgment \$4,500. Affirmed.

C. & A. R. R. Co. v. Corson, Admr, 198 Ill. 98 (6-02).

**Boy going to depot—struck crossing track.** Young man, seventeen years of age, was struck by an engine and killed while going to the depot. Case turned on evidence as to whether he was necessarily crossing track or was walking along the track. Judgment \$3,700. Affirmed.

C. & E. R. R. Co. v. Huston, 196 Ill. 480 (4-02).

**Crossing accident—leg broken.** Switch engine struck plaintiff at crossing. Leg broken. Failure to give warning. High speed in city limits. Judgment \$5,000. Affirmed.

C. B. & Q. R. R. Co. v. Pollock, 195 Ill. 156 (2-02).

**Crossing tracks between divided train—suddenly backed.** Stockman, and about one hundred others were blocked at crossing by freight train. Brakeman uncoupled cars which moved ahead about three feet. Stockman started to go through opening. Train suddenly backed catching him between couplers. Judgment \$1,000. Affirmed.

C. & E. I. Ry. Co. v. Filler, 195 Ill. 9 (2-02).

**Break down on crossing—engine ran into.** Plaintiff was removing railroad ties from a car by wagon. A load tipped on the track. While he was trying to get the ties off a train ran up at high speed and without ringing bell, striking plaintiff. Arm injured. Judgment \$5,000. Affirmed.

Elgin, Joliet & E. Ry. Co. v. Duffy, 191 Ill. 489 (10-01).

**Pedestrian struck by train—was watching another.** Deceased stepped onto track in front of train from the north; another was going north on another track. His attention was on that and he did not see the train that struck him. View obstructed so approaching train not visible. High speed. No bell or whistle. Judgment for plaintiff. Affirmed.

C. & A. R. R. Co. v. Pearson, 184 Ill. 386.

**United States mail clerk hit by train at crossing—getting mail bag.** United States mail clerk (transfer) killed while crossing track to get to mail pouch on platform between the

tracks. Freight train going at high speed past depot just as passenger train came in, struck him. Rules of company (known to deceased) forbade freight trains passing passenger train at station. Judgment \$5,000. Affirmed.

C. & A. R. R. Co. v. Kelley, Admr, 182 Ill. 267 (10-99).

**Pedestrian hit by train at crossing—trains passing.** About 8 P. M., April 20, deceased walked onto crossing of railroad and was struck by train. Had waited for train going north to pass, and was hit by train going south on track beyond to which he passed. Gates not down. Illegal speed. Crossing in thickly settled district of Chicago. No bell. Judgment for defendant. Reversed and remanded in supreme court for errors as to evidence and instructions.

Overtown, Admx. v. C. & E. I. R. R. Co., 181 Ill. 323 (10-99).

**Crossing—wagon struck—no bell.** Locomotive struck wagon at crossing. Driver injured—no bell. Insufficient brake under statute. One good count sustains verdict. Judgment for plaintiff. Affirmed.

C. & A. R. R. Co. v. Harbur, 180 Ill. 394 (6-99).

**Crossing accident—buggy hit.** Failure of flagman to warn. Injury to spine. Judgment \$5,000. Affirmed. Traveler may presume flagman will give warning.

C. & A. R. R. Co. v. Blaul, 195 Ill. 183 (10-98).

**Crossing accident—buggy hit.** Failure of flagman to warn. Injury to spine. Judgment \$5,000. Affirmed.

C. & A. Ry. Co. v. Bland, 175 Ill. 18.

**Crossing accident—flagman killed.** Flagman was warning people of train from one direction. Train from opposite direction struck him. High speed. Judgment for plaintiff—reversed because of erroneous evidence admitted.

C. P. & St. L. R. R. Co. v. Woolridge, Admx, 174 Ill. 330 (10-98).

**Crossing accident.** Deceased waited for freight train to pass crossing. In attempting to cross stepped in front of engine from opposite direction. High speed. Judgment for plaintiff. Affirmed.

C. B. & Q. R. R. Co. v. Gunderson, 174 Ill. 496.

**Deceased was struck at railroad crossing** owing to the high speed of the train and the failure to ring a bell for the crossing. Evidence on most of the material points was conflicting. Judgment \$3,800. Affirmed.

I. C. R. R. Co. v. Ashline, 171 Ill. 313 (70 Ill. App. 613 *affd.*).

**Wagon hit by train while crossing the track. Boy hitching on the wagon injured.** The gates had not been lowered. No bell was rung for the crossing or other warning given. No flagman. Judgment for plaintiff. Affirmed.

C. & A. R. R. Co. v. Redmond, 171 Ill. 347 (70 Ill. App. 119 *affd.*).

**Crossing accident.** Lady passed under gates which were down and was killed by fast train. Suit by her adult children. Judgment \$3,000. Affirmed. 1. Not negligence per se to pass gates.

C. W. I. Ry. Co. v. Ptacek, Admr, 171 Ill. 9 (2-98).

**Crossing accident.** Horse frightened—overturned buggy. Shoulder broken. Violation of ordinance. Judgment \$1,500. Affirmed. 1. Statute regarding speed of trains—scope of. 2. Ordinance—properly admitted.

I. C. R. R. Co. v. Crawford, 169 Ill. 554.

**Child two years old crossing track—killed.** Trial by jury waived. Judgment \$1,800. Affirmed.

Calumet Electric St. Ry. Co. v. Lewis, 168 Ill. 249.

**Crossing accident.** Driving load of lumber—hit by train. Ears muffled. View clear for five hundred feet except for cars on side track. Forty miles an hour. Fireman saw the wagon. Judgment \$5,000. Affirmed.

L. N. A. & C. Ry. Co. v. Patchen, Admr, 167 Ill. 204.

**Crossing accident.** Freight going east. Plaintiff waited for it to pass and stepped in front of passenger train going west. High speed. No bell. Gates up. Judgment for plaintiff. Affirmed.

C. & N. W. Ry. Co. v. Hansen, 166 Ill. 623.

**Crossing accident—boy thirteen years old struck by train.** Two trains passing in opposite direction. No gates—no flagman—high speed. Judgment \$4,500. Affirmed.

Wabash R. R. Co. v. Smith, 162 Ill. 583.

**Crossing accident. Train hit wagon.** Driver thrown out and injured. Gates up—no bell or whistle. Conflict. Judgment \$4,500. Reversed for bad instruction. Defendant's negligence and instruction refused.

C. B. & Q. R. R. Co. v. Levy, 160 Ill. 385.

**Crossing accident.** Girl twelve years old killed. Cars on sidetrack obstructed view. High speed—no bell. Judgment \$2,500. Affirmed.

B. & O. S. W Ry. Co. v. Then, Admr, 159 Ill. 535.

**Crossing accident, Chicago avenue, Chicago.** Watching train pass on one track hit by switched car on another track. No warning. Arm amputated; three fingers off the other hand. Judgment \$16,000. Affirmed.

C. M. & St. P. Ry. Co. v. Walsh, 157 Ill. 672.

**Crossing accident.** No bell—high speed. Boy sixteen years old. Mind impaired by the shock. Judgment \$10,000. Affirmed.

N. Y. C. & St. L. R. R. Co. v. Luebeck, 157 Ill. 595.

**Crossing accident.** High speed. Wagon drawn by oxen struck. Judgment \$2,000. Affirmed.

St. L. A. & T. H. R. R. Co. v. Odum, 156 Ill. 78.



**Railroad crossing accident.** Child nine years old struck and killed. Action by father, mother, two brothers and five sisters. Judgment \$3,000. Affirmed.

C. & G. T. Ry. Co. v. Gaeinowski, 155 Ill. 189.

**Private farm railroad crossing. Wagon hit by train.** Driver injured. Farm hand driving team over private crossing could not see along the track owing to trees and weeds growing on the right of way. No bell or whistle. Train was an extra, at high speed. Judgment for plaintiff. Affirmed (55 Ill. App. 87, affd.).

C. & A. R. R. Co. v. Sanders, 154 Ill. 532.

**Railroad crossing accident.** Deceased stepped into hole in sidewalk on the crossing and fell in front of approaching train. Ordinance required railroad company to keep walk in repair. Judgment for plaintiff. Affirmed.

L. N. A. & C. Ry. Co. v. Red, Admx, 154 Ill. 95.

**Railroad crossing accident at Chicago avenue, Chicago.** Pedestrian crossing series of tracks hit by train. Left arm amputated; three fingers cut off right hand. Plumber. Judgment \$29,000. Affirmed by appellate court without considering merits because of absence of judge's certificate that bill of exceptions contained all the evidence. Reversed in supreme court and remanded to appellate court with directions to consider on merits. Held that record showed bill of exceptions contained all the evidence.

C. M. & St. P. Ry. Co. v. Walsh, 150 Ill. 608.

**Railroad crossing accident.** Crossing series of six tracks with wagon. Train had passed and stopped. Backed up as plaintiff's wagon was on track and frightened horses which ran away, throwing plaintiff out of wagon. Judgment \$2,500. Affirmed.

I. C. R. R. Co. v. Larson, 152 Ill. 326.

**Railroad crossing accident, 63d street, Chicago.** Series of twenty-five tracks. Deceased was going to work. No bell—high speed. Judgment \$5,000. Affirmed.

L. S. & M. S. Ry. Co. v. Ouska, 151 Ill. 232.

**Railroad crossing accident on 51st street, Chicago.** Pedestrian killed while crossing track. No bell or whistle—gates up—prohibited speed. Suit by next of kin. Judgment \$5,000. Affirmed.

L. S. & M. S. Ry. Co. v. Hessions, 150 Ill. 547.

**Railroad crossing accident.** Lady killed by engine going at prohibited speed. She saw the engine but judged she had time to cross. Ordinance. Judgment \$2,500. Affirmed.

C. C. C. & St. L. Ry. Co. v. Baddeley, 150 Ill. 328.

**Railroad crossing accident.** Passenger train hit wagon, killing boy riding with the driver. Bell was rung and whistle blown. Horses both blind. Fast train. Judgment for defendant. Affirmed.

Partlow v. I. C. R. R. Co., 150 Ill. 322.

**Railroad crossing accident.** Milk wagon hit. Driver killed. Fast train running at speed prohibited by ordinance of village. Judgment \$3,000. Affirmed.

A. T. & S. F. R. R. Co. v. Feehan, 149 Ill. 202.

**Railroad crossing accident at Aurora, Ill.** Foot caught in space between rail and planks of crossing. Run down by train. Leg amputated. Child six years old. Space left in construction; too wide and deep. Ordinance as to. Judgment \$15,000. Affirmed.

E. J. & E. Ry. Co. v. Raymond, 148 Ill. 242.

**Railroad crossing accident.** Pedestrian struck by fast train while crossing 83d street. Double tracks—sharp curve. Dark and rainy night. No witness to the accident. While waiting for train to pass was struck by train on the track on which he stood. Judgment \$5,000. Affirmed.

I. C. R. R. Co. v. Nowicki, 148 Ill. 29.

**Railroad crossing accident.** Wagon struck by train. Driver killed. Freight cars on sidetrack obscured view of track. High speed. No bell. Judgment \$1,000. Affirmed.

C. C. C. & St. L. Ry. Co. v. Monaghan, 140 Ill. 474.

**Railroad crossing accident.** Hand-car collided with wagon. Driver thrown out. Plaintiff seventy years old. Concussion of brain; forearm broken; one eye blinded; wrist dislocated. Freight cars obscured view. Judgment \$4,500. Affirmed.

L. E. & W. R. R. Co. v. Wills, 140 Ill. 614.

**Crossing railroad tracks.** Boy nine years of age struck and killed. Was crossing at place where the tracks were laid along a public street. High speed. No bell. Ran two blocks before stopping. Engine one hundred and twenty-five feet distant when boy went on track. View clear. Judgment \$3,000. Affirmed.

L. S. & M. S. Ry. Co. v. Bodemer, 139 Ill. 597.

**Railroad crossing accident.** Train struck wagon, killing boy who was driving. Prohibited speed. Failure to give signal. Judgment \$1,350. Affirmed.

I. C. R. R. Co. v. Slater, 139 Ill. 190.

**Railroad crossing accident.** Crossing track in sleigh. Hit by engine and killed husband and wife. Both cases were consolidated and tried together. Action against receiver of railroad. Shrubbery obscured view of track. High speed. No bell. Judgment \$6,000. Affirmed.

McNulta, Receiver, v. Lockridge, 137 Ill. 270.

**Railroad crossing accident.** Pedestrian crossing a network of tracks at street struck by cars "kicked" backed upon the track he was on. Three or four trains were passing on different tracks. No bell—no brakeman on the cars "kicked" back. No flagman at the crossing. Feet crushed; permanent injury. Judgment \$7,500. Affirmed.

L. S. & M. S. Ry. Co. v. Johnson, 135 Ill. 641.

**Railroad crossing accident.** Wagon struck by engine running backward. Driver injured; horses killed. View unobscured for quarter of a mile. Evidence close on question of due care. Judgment for plaintiff. Affirmed by appellate court. Reversed in supreme court because of instructions on contributory negligence.

T. St. L. & K. C. R. R. Co. v. Cline, 135 Ill. 42.

**Railroad crossing accident.** Butcher was driving delivery wagon across a series of twenty-two tracks. Gates up. Flagman motioned plaintiff to cross. Was hit by train. View obstructed by cars on track. Judgment \$5,000. Affirmed.

C. R. I. & P. Ry. Co. v. Clough, 134 Ill. 586.

**Railroad crossing accident.** Pedestrian waited for train south to pass. Struck by train going north. No bell rung. No flagman. High speed. Deceased could have seen the train one thousand five hundred feet away had he looked. Judgment for plaintiff. Reversed in supreme court because of erroneous instruction as to due care.

C. M. & St. P. Ry. Co. v. Halsey, 133 Ill. 248

**Railroad crossing accident.** Woman seeking to cross at Wood and Kinzie streets struck by train. Was carrying child one year old and leading boy three years old. The two children were killed; the mother badly injured. View obstructed by freight cars. No flagman. Judgment \$5,000. Affirmed.

C. M. & St. P. Ry. Co. v. Wilson, 133 Ill. 55.

**Railroad crossing accident at stock yards, Chicago.** Deceased waited for train going north to pass, then started to cross, and was struck by train backing south on adjacent track. No warning. No one on rear of train to warn pedestrians. Judgment \$4,500. Affirmed.

Pennsylvania Co. v. Ellett, 132 Ill. 654.

**Railroad crossing accident.** Train struck wagon. Driver, a minor, injured. Arm amputated. View of track obstructed by

hedge fence and high board fence. No flagman. High speed. Judgment \$2,500. Affirmed.

C. & I. R. R. Co. v. Lane, 130 Ill. 117.

**Railroad crossing accident.** Wagon struck by train. Driver thrown out and injured. Bell not rung; whistle not blown. Judgment for plaintiff. Reversed for refusal of new trial because attorney for plaintiff discussed the case in a saloon with one of the jurors.

M. & O. R. R. Co. v. Davis, 130 Ill. 146.

**Railroad crossing accident.** Wagon struck by locomotive. Driver killed. High speed—contrary to ordinance. No bell or whistle. Judgment \$3,500. Affirmed.

T. H. & I. R. R. Co. v. Voelker, 129 Ill. 541.

**Railroad crossing accident.** Top buggy struck by train. Buildings near track obstructed view; also box-cars on side track. Driver killed. Conflict as to flagman and ringing of bell. Judgment \$2,400. Affirmed.

C. & A. R. R. Co. v. Adler, 129 Ill. 335.

**Railroad crossing accident.** Train struck wagon, killing two boys thirteen and nine years of age. High speed. Failure to ring bell. Action is for death of the younger boy. Judgment \$1,000. Affirmed.

I. C. R. R. Co. v. Slater, 129 Ill. 91.

**Railroad crossing accident.** Wagon struck by engine. Driver thrown out. Rupture and partial disability for life. Three trials. No bell or whistle—high speed. Building obstructed view of track. Much used crossing. Judgment for plaintiff. Affirmed.

C. & A. R. R. Co. v. Dillon, 123 Ill. 571.

**Railroad crossing accident.** Buggy struck by passenger train backing down the track. No bell or whistle—no flagman. View obstructed. Conflict on material points. Permanent injury. Judgment \$5,000. Affirmed.

C. St. L. & P. Ry. Co. v. Hutchinson, 120 Ill. 587.

**Railroad crossing accident.** Pedestrian killed. No witness to the death. Shoe found wedged between track and sidewalk. Defendant admitted switching a gravel train over the crossing about the hour deceased was seen near the crossing. Judgment for plaintiff. Affirmed.

C. & A. Ry. Co. v. Carey, 115 Ill. 115.

**Railroad crossing accident.** Wagon in which plaintiff was driving, hit by train. No flagman. Judgment for plaintiff. Affirmed.

Pennsylvania Co. v. Frana, 112 Ill. 398.

**Railroad crossing accident.** Wagon struck. Driver injured. No sign-board. No bell or whistle as required by statute. Judgment \$1,150. Reversed because of instruction stating that plaintiff could recover though guilty of slight negligence.

W. St. L. & P. Ry. Co. v. Wallace, 111 Ill. 114.

**Railroad crossing accident.** Pedestrian struck. No light—no bell—no whistle. Plaintiff had been drinking. Judgment \$3,500. Affirmed.

L. E. & W. Ry. Co. v. Zaffinger, 107 Ill. 199.

**Railroad crossing accident.** Boy struck by car while going home. No light on car. No warning to pedestrians. Judgment for plaintiff. Affirmed.

P. & P. U. Ry. Co. v. Clayberg, Admr, 107 Ill. 644.

**Railroad crossing accident.** Buggy struck by "wild train" at high speed. No bell. Weeds, etc., and bank of earth obstructed view of track. Lady thrown out and injured. Judgment for plaintiff. Reversed because of instruction as to "due warning" at crossing, and on weight to be given testimony.

C. & A. R. R. Co. v. Robinson, 106 Ill. 142.

**Railroad crossing accident.** Wagon struck by switch engine belonging to defendant. No bell—no whistle. Injury permanent inducing rheumatism. Judgment \$3,000. Affirmed.

Union Rolling Mill Co. v. Gillen, 100 Ill. 52.

**Hayrack crossing tracks** was struck by train, killing driver. Bushes on right of way obstructed view of track. No bell or whistle. Plaintiff did not look or listen before going on the track. Judgment \$3,500. Reversed because of instruction ignoring due care by plaintiff.

*C. & N. W. Ry. Co. v. Dimick*, 96 Ill. 42.

**Railroad crossing accident.** Wagon struck by train. Driver thrown out. High speed. Judgment \$4,000. Reversed because of instruction saying negligence is presumed from running train at speed prohibited by ordinance, without saying also how the presumption might be negated.

*Wabash Ry. Co. v. Henks*, 91 Ill. 406.

**Railroad crossing accident.** Wagon struck—driver thrown out and killed. Judgment \$5,000. Reversed because of instruction assuming facts.

*C. B. & Q. R. R. Co. v. Harwood*, 90 Ill. 425.

**Crossing accident.** Team attempting to cross track struck by wild train. Failure to ring bell or sound whistle. Foliage hid way to track. Judgment for plaintiff. Affirmed.

*P. P. & J. Ry. Co. v. Siltman*, 88 Ill. 529.

**Crossing accident.** Crossing obscured by weeds. No bell—no whistle. Train behind time. Judgment for plaintiff. Affirmed.

*C. B. & Q. Ry. Co. v. Lee*, 87 Ill. 454 (see 68 Ill. 576).

**Boy nine years old run down by a railroad train at street crossing.** Action by father. Judgment for plaintiff. Reversed because of instruction on care required by defendant.

*R. R. I. & St. L. R. R. Co. v. Delaney*, 82 Ill. 198.

**Crossing accident.** Dangerous crossing—deceased attempting to cross in the day time without looking to see if train was in sight—whistle blown. Judgment for plaintiff. Reversed on ground deceased did not exercise due care.

*R. R. I. & St. L. R. R. Co. v. Bryan, Admr.*, 80 Ill. 523.

**Crossing accident.** Deceased looked and listened before passing a corn field that obscured view of track—no bell or whistle. Verdict \$3,500, but the court rendered judgment on special findings held to be inconsistent with the general verdict. Reversed on the ground special findings not so inconsistent.

*Dimick, Admr. v. C. & N. W. Ry. Co.*, 80 Ill. 338.

**Railroad crossing accident.** Action by wife for death of husband—hedge obscured view of track. Train could be seen eighty rods from crossing. Judgment for plaintiff. Reversed on ground deceased did not exercise due care.

*C. B. & Q. R. R. Co. v. Harwood*, 80 Ill. 88.

**Crossing accident.** Engineer running backwards struck wagon at crossing, three tracks—driver injured—he had known of this crossing for four or five years and that it was dangerous. Judgment for plaintiff. Reversed for refusal of instruction requiring plaintiff to look and listen before crossing track.

*C. & N. W. Ry. Co. v. Hatch*, 79 Ill. 137.

**Crossing accident.** Four tracks—high speed in city—flagman absent from crossing—conflict as to bell and whistle. Deceased was struck by train. Judgment for plaintiff. Affirmed.

*St. L. V. & T. H. R. R. Co. v. Dunn, Admx.*, 78 Ill. 197.

**Crossing accident.** Passenger train struck wagon. Boy riding with driver killed. Train could be seen—bell was rung. Judgment \$3,500. Reversed because of failure of driver to use due care.

*T. W. & W. Ry. Co. v. Miller*, 76 Ill. 278.

**Crossing accident** (same case reported in 64 Ill. 512). Plaintiff riding in a wagon—was familiar with crossing—train on time—train could be seen some distance—deceased not looking for train. Judgment \$5,000. Reversed because of contributory negligence.

*C. B. Q. Ry. Co. v. Van Patten*, 74 Ill. 91.



**Crossing accident.** Plaintiff crossing track driving wagon struck by train—looked and listened before crossing—conflict as to ringing the bell. Judgment \$1,600. Affirmed.

R. R. I. & St. L. Ry. Co. v. Hillmer, 72 Ill. 235.

**Crossing accident.** Plaintiff was driving team across track—very cold day—ears muffled. Struck by car being pushed by engine. No one on car to give warning. Judgment \$4,000. Affirmed.

I. C. R. R. Co. v. Ebert, 74 Ill. 399.

**Crossing accident.** Deceased struck by train while attempting to cross track. Judgment for plaintiff. Reversed because of instruction as to exercise of due care by plaintiff.

I. C. R. R. Co. v. Goddard, Admx, 72 Ill. 567.

**Crossing accident.** Child seven years old struck by engine at crossing—leg cut off—right hand crushed, two fingers amputated. Judgment \$8,100. Affirmed.

C. & A. R. R. Co. v. Murray, 71 Ill. 601.

**Crossing accident.** Plaintiff was crossing a series of tracks—was stopped upon one track by train passing upon another track—was struck by train while attempting to cross behind passing train. Flagman shouted to plaintiff to stop but he failed to do so. Judgment for plaintiff. Reversed for contributory negligence.

C. B. & Q. Ry. Co. v. Rosenfeld, 70 Ill. 272.

**Crossing accident.** Plaintiff was crossing track on his way to work when train ran up around a curve at high speed and struck him. The engineer and fireman were laughing and talking instead of watching ahead. Judgment \$3,500. Affirmed.

C. & N. W. Ry. Co. v. Ryan, 70 Ill. 211.

**Crossing accident.** Wagon struck by engine—driver killed—conflict as to ringing of bell. Judgment for plaintiff. Reversed.

C. R. I. & P. Ry. Co. v. Bell, 70 Ill. 102.

**Crossing accident.** Deceased was killed while driving across track—country near crossing was level and train could have been seen by the exercise of ordinary care. Judgment \$5,000. Reversed because of failure to show due care.

C. B. & Q. Ry. Co. v. Lee, 68 Ill. 576.

**Crossing accident.** Failure to ring bell, sound whistle. Judgment for defendant. Reversed because instruction failed to submit the question whether the injury was caused by the negligence of defendant.

P. P. & J. Ry. Co. v. Siltman, 67 Ill. 72.

**Crossing accident.** Failure to ring bell and sound whistle. Judgment \$200. Affirmed.

C. & A. R. R. Co. v. Elmore, 67 Ill. 176.

**Crossing accident.** Deceased, the company claimed, was walking parallel with the track and suddenly turned to cross the crossing just as the train approached. Had ears muffled. High speed and no bell. Judgment for plaintiff. Reversed for instruction saying that if no bell was rung, plaintiff could recover.

C. B. & Q. Ry. Co. v. Van Patten, 64 Ill. 510.

**Crossing accident.** Plaintiff was crossing track about ten o'clock at night and was struck by a locomotive having no head light, and sounding no bell or whistle. Both legs amputated. Judgment for plaintiff. Affirmed.

I. & St. L. Ry. Co. v. Galbreath, 63 Ill. 436.

**Crossing accident.** Wagon struck, driver injured—warehouse partially obstructed view. Judgment for plaintiff. Reversed because of contributory negligence.

C. & A. R. R. Co. v. Jacobs, 63 Ill. 178.

**Crossing accident.** Plaintiff was approaching crossing, driving wagon. Stopped sixty yards from track and listened. Hearing nothing and being unable to see along the track, he at-

tempted to cross and was hit by a train at high speed. No bell ringing. Judgment for plaintiff. Affirmed.

I. & St. L. R. R. Co. v. Stables, 62 Ill. 313.

**Crossing accident.** Wagon struck; driver injured. Judgment for plaintiff. Reversed for instruction requiring too great a care of defendant.

C. B. & Q. Ry. Co. v. Dunn, 61 Ill. 385.

**Crossing accident.** Wagon struck by train; driver killed. Judgment for plaintiff. Reversed for instruction ignoring exercise of due care.

C. B. & Q. Ry. v. Lee, 60 Ill. 501.

**Crossing accident.** No sign board. Embankment on either side, three to seven feet high. Track down grade. Road steep down to track. Listened and heard no train. Freight train at high speed struck buggy, killing driver. Another wagon had crossed ahead of deceased. No whistle. Judgment for plaintiff. Affirmed.

C. B. & Q. Ry. Co. v. Payne, 59 Ill. 534 (same case as 49 Ill. 499).

**Crossing accident.** Detached cars unlighted and unattended by any brakeman on a dark night struck deceased. He had waited for another train to pass, and was struck while passing from behind last car. Judgment \$2,400. Affirmed.

C. & A. R. R. Co. v. Gaway, 58 Ill. 83.

**Crossing accident.** Plaintiff allowed his wagon to run up too near to passing train, which struck the tongue, overthrowing wagon and throwing him out. Judgment for plaintiff. Reversed, due care not shown.

C. & A. R. R. Co. v. Fears, 53 Ill. 115.

**Crossing accident—wagon struck—driver killed.** No warning board. Judgment for plaintiff. Reversed because of instruction on comparative negligence. (Same case 59 Ill. 534.)

C. B. & Q. R. R. Co. v. Payne, 49 Ill. 499.

**Crossing accident. Wagon struck by train. Driver thrown out. Bell rung; low speed. No flagman seen by witnesses—conflict as to. Judgment for plaintiff. Reversed—defendant's negligence not shown.**

*C. & A. R. R. Co. v. Gretzner*, 46 Ill. 75.

**Crossing accident. Train struck wagon injuring driver. Conflict as to bell and whistle. Left foot useless. Judgment \$5,800. Reversed because of excessive damages.**

*C. R. I. & P. Ry. Co. v. McLean*, 40 Ill. 218.

**Crossing accident. Train of flat-cars driven before an engine through a deep cut across public highway. Covered buggy. Driver killed. Engineer whistled once. Banks of earth on either side obscured view of track. Judgment \$1,000. Affirmed.**

*C. B. & Q. R. R. Co. v. Triplett*, 38 Ill. 484.

**Horse killed at crossing. No bell or whistle—no attempt to stop train. Judgment for plaintiff. Affirmed.**

*C. B. & Q. R. R. Co. v. Cauffman*, 38 Ill. 425.

**Wagon stalled on crossing struck by train. Engineer saw wagon but made no attempt to stop, thinking it would be moved off track. Judgment for plaintiff. Affirmed.**

*C. & A. R. R. Co. v. Hogarth*, 38 Ill. 371.

**Deaf person struck by train at crossing. Conflict as to speed. Whistle blown. Plaintiff driving fast. Judgment for plaintiff. Reversed for failure to exercise due care.**

*I. C. R. R. Co. v. Buckner*, 28 Ill. 299.

**Crossing accident. Wagon hit; driver killed. No bell or whistle. Judgment \$2,000. Reversed for want of good declaration; failure to allege railway ran in state and county where action was begun.**

*C. R. I. & P. Ry. Co. v. Morris*, 26 Ill. 400.

**Crossing accident.** Buggy struck. Driver permanently injured. No bell or whistle. Judgment \$15,500. Reversed because of instruction saying defendant was negligent if it failed to ring bell or blow whistle.

G. & C. U. Ry. Co. v. Dill, 22 Ill. 265.

**Crossing accident.** Plaintiff drove onto crossing with ears muffled and failed to look for train. Judgment for plaintiff. Reversed on ground of contributory negligence shown.

C. R. I. & P. Ry. Co. v. Still, 19 Ill. 499.

**Crossing accident.** Team struck by engine. Judgment for plaintiff. Reversed on ground that defendant not liable for wilful negligence of servant.

I. C. R. R. Co. v. Downey, 18 Ill. 259. -

#### **d. Cattle Shipper Injured.**

**Cattle shipper riding in engine fell out window.** Cattle shipper taking cattle to market, rode in the engine by invitation of conductor. Had free fare in the caboose. Fell out of engine window getting upon seat. Judgment \$5,000. Reversed and remanded in supreme court because of erroneous instruction on due care.

Ill. Central R. R. Co. v. Jennings, 217 Ill. 140 (10-05).

**Cattle shipper—train started while he was in car.** Cattle shipper was watering his stock en route. Train started before he could get out. Was thrown out by sudden jerk. Right foot and ankle amputated causing death. Judgment \$5,000. Affirmed.

I. C. R. R. Co. v. Beebe, 174 Ill. 13.

**Stock shipper caught between cars which started without warning.** Was inspecting his cattle. Judgment for plaintiff. Affirmed.

N. Y. C. & St. L. R. R. Co. v. Blumenthal, 160 Ill. 40.

**Stock shipper riding on platform of caboose** thrown down by sudden jerk and foot caught between bumpers. Door of caboose was closed forcing shipper to remain on platform. Judgment \$6,000. Reversed without remanding by appellate court on ground that defendant's negligence was not shown. Affirmed in supreme court.

*Hawk v. C. B. & N. R. R. Co.*, 147 Ill. 399.

**Switching.** Stock shipper riding on free pass. Went to restaurant for lunch. Came back and got on platform of caboose. Door locked. Sat on end rail. The caboose was being switched back and forth. A sudden bump unbalanced plaintiff and his foot came between the bumpers crushing big toe. Amputation. Judgment for plaintiff. Reversed in appellate court on ground of contributory negligence. Appellate court reversed for failure to properly recite finding of facts. (See 147 Ill. 399.)

*Hawk v. C. B. & N. Ry. Co.*, 138 Ill. 37.

**Stock shipper riding on foot-board of switch engine** was thrown off by a sudden jerk of the engine as it started ahead to make a flying switch after uncoupling from car containing cattle belonging to the shipper. Was on foot-board at request of engineer. Struck by the car following and killed. Judgment for plaintiff. Affirmed.

*L. S. & M. S. R. R. Co. v. Brown*, 123 Ill. 163.

**Stock shipper riding on the tender of the engine** by direction of the engineer. No other place provided. Was killed in head-on collision with train of another railroad company, round a sharp curve. Judgment \$5,000. Affirmed.

*Union Ry. & Transit Co. v. Shacklet, Admr*, 119 Ill. 232.

#### **e. Defective Cars, etc.**

**Defective step on ladder of car.** Switchman slipped while descending ladder and fell under car. Was getting off to avoid coal chute. Judgment \$2,500. Affirmed.

*Peoria & Pekin Ry. Co. v. Schantz*, 226 Ill. 506.

**Defective coupling apparatus—stumbled over wire.** Conductor, forty years of age, seventeen years' experience, attempted to uncouple cars at night, the brakeman being sick in the caboose. The coupling apparatus was defective and plaintiff had to walk along with the car to hold the pin up. Stumbled over semaphore wire and fell under car. Arm amputated. Judgment \$6,000. Affirmed.

C. & E. I. R. R. Co. v. Snedaker, 223 Ill. 395 (10-06).

**Brakesman coupling cars.** Hand crushed owing to defective coupler. Had been reported to defendant. Judgment \$4,000. Affirmed.

C. & A. R. R. Co. v. Walters, 217 Ill. 87 (10-05).

**Defective journal—train ditched—following train collided.** Defective journal ditched one train, another train on which plaintiff was fireman, ran into the ditched train. Oncoming train not duly warned of danger. Judgment \$8,000. Reversed and remanded on ground statute of limitations barred amended count on which recovery was had.

The Wabash R. R. Co. v. Bhymer, 214 Ill. 519 (4-05).

**Defective coupling apparatus—switchman crushed.** Switchman crushed between cars while coupling them. Coal car had patent coupler—the other car "link and pin." Failure to inspect and to repair. Grab-iron broken off. Judgment for plaintiff. Affirmed.

Belt Ry. Co. of Chicago v. Confrey, 209 Ill. 344 (4-04).

**Defective journal—engine derailed—switchman injured.** Journal of switch engine, worn and weakened, gave way. derailling engine and injuring switchman. C. & G. T. Ry. Co. leased tracks from another company. Judgment against both lessor and lessee. Affirmed. Full discussion of lessor's liability for negligence of lessee. (104 Ill. App. 57, affirmed.) Judgment \$6,000. Affirmed. Dissenting opinion by three judges.

C. & G. T. Ry. Co. v. Hart, 209 Ill. 414 (4-04).

**Engine broke loose from tender—fireman fell between.** Fireman on locomotive was "coaling up" when engine broke loose from tender. Fireman fell between and was killed. Chains that hold tender and engine together were not in place. Too short—could not be coupled. Engineer and fireman knew the situation. Judgment for plaintiff. Reversed and remanded for erroneous instructions as to assumed risk.

C. & E. I. R. R. Co. v. Heerey, Admr, 203 Ill. 492 (6-03).

**Defective coupling apparatus—switchman injured.** Switchman employed by defendant was attempting to couple cars. Hand crushed because of defective coupling apparatus. Judgment \$3,000. Affirmed.

P. C. C. & St. L. Ry. Co. v. Hewitt, 202 Ill. 28 (2-03).

**Defective coupling apparatus—brakeman injured.** Brakeman on freight train had hand crushed while attempting to couple cars. One car was without "grab-iron" as required by statute. Judgment \$3,500. Affirmed.

Malott, Receiver, v. Hood, 201 Ill. 202 (2-03).

**Loose car door hit section hand near track.** Loose car door on passing train, swung out and struck deceased, a section man who stood at the side of the track to let the train pass. Train crew knew the door was loose and had tried to repair it, at last station. Judgment \$5,000. Affirmed.

C. & A. R. R. Co. v. Cullen, Admx, 187 Ill. 523 (10-00).

**Defective brake on freight car.** Defective brake on freight car—switchman could not stop car—ran ahead to make coupling—hand and arm crushed. 1. What is statement of same cause. Judgment for plaintiff. Affirmed.

I. C. R. R. Co. v. Welland, 179 Ill. 609 (2-99).

**Defective coupling apparatus.** Conductor of coal train injured while inspecting car. Was trying to adjust a defective coupling. Train backed catching his hand. Judgment \$5,000.



**Affirmed.** Negligence in using machinery (74 Ill. App. 148, affirmed).

*C. & E. R. R. Co. v. Knapp*, 176 Ill. 127 (12-98).

**Defective station platform—foot crushed.** Passenger about to get on train. Platform on level with car platform. Space ten inches between car and platform. Foot got into space and was crushed. Proof of other accidents at same place. Judgment for plaintiff. **Affirmed.**

*I. C. R. R. Co. v. Treat*, 179 Ill. 576 (2-99).

**Defective coupling apparatus—train broke in two—collision.** Brakeman lost a leg while trying to prevent a collision. Was on car setting brake. Collision threw him under the car. Draw bar of car broke. Judgment for plaintiff. **Affirmed.**

*C. & N. W. Ry. Co. v. Gillison*, 173 Ill. 264.

**Broken draw bar fell on track in front of engine.** Plaintiff was a switchman employed by defendant. He was riding on the foot board of the engine and was struck by the draw bar on the track, and thrown from the foot board. Leg amputated. The draw bar had remained on the track for four hours. Judgment \$6,000. **Affirmed** (68 Ill. App. 307).

*C. & N. W. Ry. Co. v. Delaney*, 169 Ill. 581.

**Defective coupling apparatus—foreign car.** Brakeman injured. Judgment for plaintiff. **Affirmed.**

*I. C. R. R. Co. v. Harris*, 162 Ill. 200.

**Passenger passing from rear car to the front one fell between.** Stumbled over flanges left up. Judgment \$1,300. **Affirmed.**

*C. & A. R. R. Co. v. Gates*, 162 Ill. 98.

**Defective car platform.** Lady caught dress when alighting—thrown to ground. No platform for passengers to alight on. Judgment \$5,000. **Affirmed.**

*I. C. R. R. Co. v. O'Connell*, 160 Ill. 637.

**Defective brake wheel on box car.** Yard switchman thrown off car and under wheels by the brake wheel breaking off as he tried to set the brake. Judgment \$5,000. Affirmed.

*C. & E. J. R. R. Co. v. Kneirim*, 152 Ill. 458.

**Defective coupling.** Brakeman killed while seeking to couple cars. Draw bar broke. Judgment \$3,000. Affirmed.

*O. & M. Ry. Co. v. Wangelin*, 152 Ill. 138.

**Defective handrail on car.** Conductor acting as brakeman injured. Reached for handrail to steady himself while coupling. Handrail was bent against car. His hand missed and he lost his balance. One leg amputated—the other crushed; permanent disability. Judgment \$14,000. Affirmed.

*J. A. & N. Ry. Co. v. Velle*, 140 Ill. 60.

**Defective freight car**—no end step or handle as is customary. Conductor fell between cars owing to absence of handle for which he reached around the end of the car while about to uncouple the car. Arm amputated. Judgment for plaintiff. Affirmed.

*C. B. & Q. R. R. Co. v. Warner*, 123 Ill. 38.

**Defective coupling apparatus** resulted in the death of brakeman who was seeking to couple car to engine on a steep grade. The bump of the engine knocked the car up grade. While deceased was seeking to fix the coupling, it started down grade upon deceased. Defective brake. Judgment for plaintiff. Reversed because of erroneous instruction on duty of brakeman to look out for defective appliances.

*C. & A. R. R. Co. v. Bragonier*, 119 Ill. 51.

**Engineer fell off his engine while in motion.** Was seeking to oil the engine. Defective foot-board proximate cause. Had called defendant's attention to the defect. Promised to repair. Judgment \$3,000. Affirmed.

*Missouri Furnace Co. v. Abend*, 107 Ill. 45.

**Defective coupling.** Brakeman's hand caught. Follower of draw bar broken. Thumb crushed. Car belonged to another company, but was being handled by defendant for whom plaintiff worked. Judgment for plaintiff. Affirmed.

C. B. & Q. R. R. Co. v. Avery, 109 Ill. 314.

**Freight conductor attempting to uncouple cars while train was in motion.** Fell between the cars owing to absence of hand-rail or steps at the end of the car as is usual. Arm amputated. Judgment \$5,000. Reversed because of bad instruction as to due care by plaintiff in ascertaining defect.

C. B. & Q. R. R. Co. v. Warner, 108 Ill. 538.

**Defective throttle valve on locomotive.** Switchman's hand crushed while coupling cars owing to sudden jerk of engine due to incomplete control because of defective valve. Foreman at roundhouse knew of defect. Finger cut off. Judgment \$2,000. Affirmed.

C. & E. J. R. R. Co. v. Rung, 104 Ill. 641.

**Defective locomotive.** Pilot improperly constructed. Plaintiff reported same to superintendent who promised to repair it. Judgment \$3,000. Affirmed.

I. & St. L. R. R. Co. v. Estes, 96 Ill. 470.

**Defective ladder on car.** Brakeman injured while using; in the necessary performance of his duties. Top step gave way. The ladder appeared to be in good condition. Leg amputated. Judgment \$3,500. Reversed because of instruction omitting element of knowledge or want of due diligence by defendant.

C. & A. R. R. Co. v. W. Platt, 89 Ill. 141.

✓ **Defective car wheels.** Train derailed, passenger injured. Judgment for plaintiff. Reversed on the ground that defendant was not shown to have been negligent.

T. W. & W. R. R. Co. v. Beggs, 85 Ill. 80.

**Defective machinery.** Switchman coupling cars—hand injured—because of the absence of an iron link in the bumper of

the engine.\* Plaintiff had knowledge that there was something the matter with it. Judgment for plaintiff. Reversed on the ground no cause of action shown.

C. & A. R. R. Co. v. Munrow, 85 Ill. 25.

**Defective coupling.** Brakeman caught between platform of cars and killed. Draw bars passed each other—deceased was an experienced man and knew about this kind of coupling. Judgment \$3,000. Reversed on the ground that due care was not shown.

T. W. & W. Ry. Co. v. Ashbury, 84 Ill. 430.

**Defective ladder—on freight car.** Ladder gave away while brakeman was climbing down side of car, throwing him under cars. Five ribs broken, one foot crushed, arm broken—paralysis. Judgment \$5,000. Affirmed.

T. W. & W. Ry. Co. v. Ingraham, 77 Ill. 309.

**Defective coupling.** Brakeman injured while seeking to couple car—arm caught between the dead wood attached to the car and crushed—amputated. Notice of defect to defendant not shown. Judgment \$6,000. Reversed because notice to defendant of the defect not shown and that the risk was assumed.

I. B. & W. Ry. Co. v. Flanigan, 77 Ill. 365.

**Brakeman injured coupling cars.** Defective coupling of which plaintiff had no notice—hand crushed. Demurrer to declaration sustained on ground that defendant's negligence not properly averred. Judgment. Affirmed.

McGanahan v. E. St. L. & C. Ry. Co., 72 Ill. 557.

**Defective coupling apparatus.** Switchman injured while coupling cars—draw bar too short—hand crushed. Judgment \$5,000. Affirmed.

T. W. & W. Ry. Co. v. Fredericks, 71 Ill. 294.

**Defective coupling apparatus.** Plaintiff was a brakeman on a train carrying defective cars to repair shop. That was his

usual work. Was injured because of defective coupling. Held risk assumed. Judgment for plaintiff. Reversed on ground the risk was assumed.

C. & N. W. Ry. Co. v. Ward, 61 Ill. 130.

**Defective car ladder.** Two steps missing. Brakeman attempted to descend but fell owing to absence of two steps. Legs amputated. Judgment \$18,000. Reversed because of excessive damages.

C. & N. W. Ry. Co. v. Jackson, 65 Ill. 492.

**Defective brake.** The nut holding the wheel firm on the upright rod became loose. The wheel came off as brakeman was turning it, and he was thrown to the ground and killed. Proximate cause, oscillation of car due to high speed. Engineer incompetent. Judgment for plaintiff. Affirmed.

I. C. R. R. Co. v. Jewell, 46 Ill. 99.

#### **f. Defective Track, Platforms, etc.**

**Defective track in yard—switching—stumbled.** Left leg crushed—1:30 A. M. Judgment for plaintiff. Affirmed (75 Ill. App. 466).

L. E. & W. R. R. Co. v. Morrissey, 177 Ill. 376 (12-98)

**Brakeman coupling car fell over defective track.** Railroad company had failed to fill between the ties with cinders. No one saw the accident. Inference deceased stepped into hole and fell. Judgment \$5,000. Affirmed.

I. C. R. R. Co. v. Cozby, Adm, 174 Ill. 109.

**Defective frog in railroad track.** Brakeman's foot caught. Was making a coupling when foot caught in unblocked switch. Thrown down and run over. Foot and two fingers amputated. Judgment \$5,000. Reversed and remanded on holding that the brakeman assumed the risk of this danger as incident to the employment.

I. C. R. R. Co. v. Campbell, 170 Ill. 163 (58 Ill. App. 275, reversed).

**Defective track—train derailed.** A defective track near a crossing caused a train to leave the track and run into the tower house in which the tower man was performing his duties. The tower house was knocked over injuring the tower man. Judgment \$9,000. Affirmed (67 Ill. App. 155, *affd.*).

*L. S. & M. S. Ry. Co. v. Conway*, 169 Ill. 505.

**Defective track. Brakeman stumbled.** Leg cut off. Hole between two ties. Judgment for plaintiff. Affirmed.

*I. C. R. R. Co. v. Sanders*, 166 Ill. 270.

**Foot caught in hole in railroad crossing.** Run down by train and killed. Judgment for plaintiff. Affirmed.

*T. H. & I. R. R. Co. v. Eggman*, 159 Ill. 551.

**Defective track—left rough by section man.** Locomotive rolled and jumped in passing over the uneven rails, and threw the fireman off the engine to the ground. Track had remained in that condition for ten hours. Judgment \$3,250. Affirmed.

*C. & A. R. R. Co. v. Kerr*, 148 Ill. 605.

**Defective railroad track—train derailed.** Passenger on Pullman sleeper injured. Spine seriously hurt. Judgment \$30,000. Reversed in supreme court on ground of variance as to where plaintiff started and where he was to go. Three judges dissent.

*Wabash Western Ry. Co. v. Friedman*, 146 Ill. 583.

**Passenger train jumped track** owing to high speed and defective roadbed. Ties decayed and weak. Judgment for plaintiff. Affirmed.

*C. P. & St. L. Ry. Co. v. Lewis*, 145 Ill. 67.

**Car derailed—defective track.** Brakeman standing on top thrown off and killed. Was employe of Wisconsin Central but the train was running on track owned by another company. Judgment for plaintiff. Affirmed.

*Wisconsin Central R. R. Co. v. Ross*, 142 Ill. 9.

**Defective railroad track—running at high speed over.** Train jumped the track. Passenger riding on annual free pass injured. Judgment \$6,500. Affirmed.

J. S. E. Ry. Co. v. Southworth, 135 Ill. 250.

**Defective roadbed—space between ties not filled. Switchman killed in the line of his duty.** Judgment for plaintiff. Affirmed.

C. & E. I. R. R. Co. v. Hines, 132 Ill. 162.

**Defective switch in tracks.** Brakeman's foot caught. Struck by car, knocked down and arm crushed so that amputation was necessary. Switch unblocked. Judgment for plaintiff. Reversed because of erroneous instruction as to care required of master to provide safe appliances.

C. R. I. & P. R. R. Co. v. Sonergan, 118 Ill. 41.

**Defective track—train derailed.** Lady passenger injured. Shoulder dislocated—nervous shock. Signed release next day while under the influence of drugs given to quiet pain. Judgment for plaintiff. Affirmed.

C. R. I. & P. Ry. Co. v. Lewis, 109 Ill. 122.

**Brakeman's foot caught between ties which were not filled or ballasted.** Was seeking to make a coupling. Both feet amputated. Sidetrack little used. Brakeman was not compelled to walk on the track to couple the cars. Defective track open to view. Judgment for plaintiff. Reversed for refusal of evidence showing that it was usual to leave sidetracks unballasted.

Pennsylvania Co. v. Hawkey, 93 Ill. 580.

**Engine derailed because of flattened rail.** Engineer injured. He knew of bad condition of road. Ran over at high speed. Judgment for plaintiff. Reversed on ground that contributory negligence was shown.

I. C. R. R. Co. v. Patterson, 98 Ill. 290.

**Lady going to depot stepped into hole in platform.** Knee injured—not cured after three years. Judgment \$2,500. Reversed because of excessive damages.

C. R. I. & P. Ry. Co. v. Payzant, 87 Ill. 125.

**Plaintiff was crossing railroad track, fell into hole in crossing—sidewalk—struck by train before she could get out of the way.** Action against the city and railroad company jointly. Judgment for defendants. Reversed because of defective bill of exceptions.

Schmidt v. C. & N. W. Ry. Co., 83 Ill. 404.

**Broken rail in track—train derailed.** Passenger injured—permanent injury—jumped out of car when it ran off the track. Judgment for defendant. Affirmed.

Heazle v. I. B. & W. Ry. Co., 76 Ill. 501.

**Defective roadbed.** Train derailed. Passenger injured. Spine injured. Permanent injury. Judgment \$5,000. Affirmed.

P. C. & St. L. Ry. Co. v. Thompson, 56 Ill. 138.

**Passenger standing on platform and waiting for train was struck by train running up behind him.** The platform was between the tracks and very narrow. He was waiting for train. Music teacher. Arm amputated. Judgment \$8,000. Affirmed.

C. & A. R. R. Co. v. Wilson, 63 Ill. 167.

**Defective depot platform.** A hole had existed in depot platform of defendant for nearly two years, due to a decayed plank. Plaintiff was crossing platform—stepped into the hole and fell. Judgment \$1,000. Affirmed.

T. W. & W. Ry. Co. v. Grush, 67 Ill. 262.

**Defectively constructed culvert.** Train thrown from track. Fireman on locomotive killed. Judgment \$3,400. Reversed because of instruction on measure of damages.

C. & N. W. Ry. Co. v. Swett, 45 Ill. 197.



**g. Objects Too Near Track.**

**Post too near track.** Switchman making a coupling was caught between post and car as he stepped from between the cars after making coupling. Died of his injuries. Judgment \$5,000. Reversed and remanded because of instruction as to assuming unusual dangers.

*I. C. R. R. Co. v. Fitzpatrick*, 227 Ill. 478.

**Post near track—brakeman knocked off.** Brakeman injured. Knocked off the car ladder by a post placed too near track. Construction necessary under conditions. No warning to plaintiff. Judgment \$1,500. Affirmed.

*M. & O. R. R. Co. v. Vallowe*, 214 Ill. 124.

**Boy swung from car—struck cattle guard too near track.** Passenger, seventeen years old, swung his body out from car and struck a cattle guard built too near the track. Plaintiff had been standing on rear platform smoking. Seats unoccupied. Judgment for defendant directed. Affirmed.

*Hewes v. C. & E. I. R. R. Co.*, 217 Ill. 500 (10-05).

**Overhead steam pipe across switch track struck brakeman on car.** Thrown to ground. Hip fractured. Judgment \$3,000. Affirmed.

*Western Brewery Co. v. Meredith*, 166 Ill. 306.

**Object too near track.** Switchman struck. Defendant left plank sticking in the mud, one end extending above ground close to track. Switchman ran against it while attending to his duties at night. Judgment \$1,500. Affirmed.

*Gerke v. Fancher*, 158 Ill. 377.

**Pole too near track.** Brakeman knocked off while descending ladder on side of car and killed. Space between pole and car—eighteen inches. Had remained in same position three years. Railroad company had not placed the pole. Deceased

not shown to have known of pole. Judgment for plaintiff. Affirmed.

C. & I. R. R. Co. v. Russell, Admr, 91 Ill. 299.

**Getting on cars in motion.** Post too near track. Plaintiff ran against and was crushed between post and car. Plaintiff had time to get on before train started, but went into baggage room. Had got on platform but was crowded off. Car doors locked. Judgment for plaintiff. Reversed because of misleading instruction as to liability where there is joint negligence causing injury.

C. & N. W. Ry. Co. v. Scates, 90 Ill. 586.

**Mail catcher too near track.** Fireman on engine struck by and injured. No witness to the accident. Night dark. Judgment for plaintiff. Affirmed.

C. B & Q. Ry. Co. v. Gregory, 58 Ill. 272.

**Brakeman knocked off ladder of car** by awning projecting from station house, while in the discharge of his duties. Arm injured so as to require amputation. Release given which court ruled of no force. Judgment \$10,000. Reversed as excessive and for instruction as to release.

I. C. R. R. Co. v. Welch, 52 Ill. 183.

#### **h. Open Switch.**

**Open switch caused collision.** Switch car of "Clover Leaf Line" was bringing cars to freight house, pushing them ahead of engine. A crew of defendant had negligently switched a car onto side track projecting over main line and switch open. Clover Leaf Line ran into switch against car. Plaintiff was riding on front foot board of engine. Was crushed between engine and car. Broken leg, finger cut off. Judgment \$10,000. Affirmed.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9 (10-01).

**Open switch.** Switch left open by crew of passing train—collision. The lights at the switch were not lighted. Fireman on locomotive was killed. Judgment \$5,000. Affirmed.

C. & A. R. R. Co. v. House, 172 Ill. 601 (71 Ill. App. 147, *affd.*).

**Open switch—no lights on stand.** Engineer jumped and was injured. Switch had been opened at railroad crossing by train crew that had just passed. The switch light had been put out by jar of passing train. Engineer saw the open switch too late to stop. Judgment \$15,000. Affirmed (54 Ill. App. 386, *affd.*).

C. & W. I. R. R. Co. v. Flynn, 154 Ill. 448 (1-95).

**Open switch—engine ran onto sidetrack** and collided with train standing there. Engineer killed. The switch target obscured by smoke from another engine prevented deceased seeing switch was open. Was running at speed higher than railroad rule permitted. Judgment \$5,000. Affirmed.

L. S. & M. S. Ry. Co. v. Parker, 131 Ill. 557.

**Open switch—engineer killed.** Crew of another train went onto side track and left switch open. Train derailed. Judgment for plaintiff. Affirmed.

C. & A. R. R. Co. v. Pietsam, 123 Ill. 518.

### **i. Passenger Ejected From Car.**

**Thrown off railroad car.** Passenger ejected from moving train. Judgment \$2,000. Affirmed (75 Ill. App. 579, *affirmed.*).

I. C. R. R. Co. v. Davenport, 177 Ill. 110 (12-98).

**Passenger on train over St. Louis bridge** ejected from car on the bridge. While seeking to get off the bridge he fell through a grating to the ground and was killed. The bridge company and railroad company co-operated in the traffic across the bridge. Judgment \$5,000. Affirmed.

Union Ry. & T. Co. v. Kallaber, 114 Ill. 325.

**Passenger riding on coupon ticket** ejected from car using only necessary force. The ticket was over several roads from

**Omaha to New York.** Conductor refused the ticket at Philadelphia and demanded fare on order of his company having discontinued this class of tickets. Plaintiff refused to get off or pay fare, so was ejected. Judgment \$15,000. Reversed because of instruction on measure of damage.

*Pennsylvania R. R. Co. v. Cornell*, 112 Ill. 295.

**Passenger ejected from train.** Riding on commutation ticket with his family—conductor refused ticket—plaintiff refused to pay fare and was put off—no injury resulted. Judgment \$1,000. Reversed because of excessive damages.

*C. & N. W. Ry. Co. v. Chisholm*, 79 Ill. 584.

**Passenger ejected from Pullman sleeper**—had lost his ticket. No personal violence. Plaintiff refused to pay additional charges. Judgment \$3,000. Reversed for excessive damages.

*Pullman Palace Car Co. v. Reed*, 75 Ill. 125.

**Passenger ejected from car**—no extreme violence—no serious injury. Judgment \$2,500. Reversed because of excessive damage.

*C. R. I. & P. Ry. Co. v. Riley*, 74 Ill. 70.

**Passenger ejected from train by conductor.** Conductor took up plaintiff's ticket—disagreement arose as to what station plaintiff's ticket was for and conductor demanded additional fare which plaintiff refused to pay and was put off. He got on the cars the second time and offered to pay fare. While paying fare he abused the conductor in loud terms. The conductor returned his money and forcibly ejected him from the train again. Judgment \$1,500. Reversed because of instruction saying the conductor was not justified in putting plaintiff off because of his abusive language—and excessive damages.

*C. B. & Q. Ry. Co. v. Griffin*, 68 Ill. 499.

**Ejected from passenger car.** Plaintiff purchased a ticket to Chicago but desired stop-over privilege at Joliet for thirty days. After thirty days he boarded train to Chicago, the conductor

refused the stop-over ticket and forcibly expelled plaintiff from the car. Demurrer to the declaration was sustained on the ground that no more than necessary force was used. Affirmed. Discussion as to what are reasonable rules as to purchase of ticket.

Churchill V. C. & A. R. R. Co., 67 Ill. 390.

**Ejected from passenger train.** Plaintiff applied to ticket office but could get no answer and got on train without ticket—he explained situation to conductor who refused cash fare and put him off at place not a station. Judgment \$500. Reversed as excessive.

I. C. R. R. Co. v. Cunningham, 67 Ill. 316.

**Ejected from freight train.** Plaintiff boarded a freight train without ticket but offered to pay his fare, which the conductor refused to accept as against railroad rules. Stopped train half mile from the station and plaintiff got off at conductor's request and walked back. No injury shown. Judgment \$2,100. Reversed because of excessive damages.

T. P. & W. Ry. Co. v. Patterson, 63 Ill. 304!

**Ejected from freight train.** Plaintiff boarded a freight train without ticket but offered to pay his fare, conductor refused to accept cash fare and put plaintiff off the train at a place not a station—no violence or injury. Judgment \$200. Affirmed.

C. C. R. R. Co. v. Johnson, 67 Ill. 312.

**Ejected from freight train.** Plaintiff got on train without ticket as required by company's rule. Conductor stopped train and ordered him to leave the car. No violence or injury. Judgment \$50. Reversed—no cause of action.

I. C. R. R. Co. v. Nelson, 59 Ill. 110.

**Ejected from train.** Plaintiff attempted to secure a ride on an alleged pass. It was refused. He would not pay fare or get off train. Employes expelled him forcibly. Judgment \$2,500. Reversed for erroneous instruction for plaintiff.

C. R. I. & P. Ry. Co. v. Herring, 57 Ill. 59.

**Ejected from freight train.** Plaintiff had secured no ticket as rule of railroad company required, and was put off by conductor at place not a regular station. Plaintiff was sick and informed conductor he was unable to walk back, one-half mile. The effort aggravated his illness and confined him to his bed. Judgment \$1,100. Affirmed.

I. C. R. R. Co. v. Sutton, 53 Ill. 397.

**Passenger ejected from train by conductor.** Force used. Refusal to stop train. Plaintiff fell; shoulder dislocated. Judgment for plaintiff. Affirmed.

C. R. I. & P. Ry. Co. v. Otto, 52 Ill. 416.

**Passenger forcibly ejected from train, at place not regular station.** Refused to pay fare. Judgment for plaintiff. Reversed because of excessive damages.

C. & N. W. Ry. Co. v. Peacock, 48 Ill. 253.

**Ejected from caboose of freight train.** Could not secure ticket; office closed; offered to pay fare. Plaintiff was put off at water-tank, quarter of a mile from station. No violence. It was customary to carry passengers in the caboose. Judgment \$100. Affirmed.

C. & A. R. R. Co. v. Flagg, 43 Ill. 364.

**Ejected from passenger train.** Plaintiff bought ticket but would not surrender it to the conductor unless he gave him a check. Plaintiff severely injured. Judgment \$125. Reversed because lower court ruled that rule of railroad company requiring tickets to be surrendered was unreasonable.

I. C. R. R. Co. v. Whittemore, 43 Ill. 420.

**Passenger ejected for non-payment of fare.** Plaintiff was a passenger; was put off train at place not a regular station. No injury done. Judgment \$450. Reversed because of excessive damages.

C. & A. R. R. Co. v. Roberts, 40 Ill. 503.

**Passenger ejected from train.** Refused to pay extra fare for failure to buy ticket—no injury. Judgment \$1,000. Reversed for excessive damages.

C. B. & Q. R. R. Co. v. Parks, 18 Ill. 460.

**j. Passenger Jerked or Thrown Off or Down.**

**On rear platform—jolted off car.** Passenger signaled to stop. Car did not. Went to rear platform to see conductor. While there was jolted off car, two hundred and twenty-five feet from crossing. Judgment \$2,500. Affirmed.

Alton Ry. Gas & Electric Co. v. Webb, 219 Ill. 563 (2-06).

**Thrown off at curve—on platform.** Passenger on excursion train, could not get a seat so stood on platform. Thrown off at curve because of high speed. Judgment \$5,000. Affirmed.

Chicago and W. I. R. Co. v. Newell, 212 Ill. 332 (12-04).

**Riding on step—hit by projecting car.** Passenger—boy fifteen years of age—on crowded car, rode on step. Body projected so that it struck car on side track too near main line. Not negligence per se to so ride. Force of company's rules. Judgment for plaintiff. Affirmed.

L. S. & M. S. Ry. Co. v. Kelsey, 180 Ill. 530 (6-99).

**Lady passenger thrown to floor by jerk of car.** Station had been called; train slowed down. Plaintiff had risen from seat when car was jerked ahead after coming to a stop. Judgment \$2,500. Affirmed.

C. & A. R. R. Co. v. Arnol, 144 Ill. 261.

**Passenger fell off platform.** Crowded excursion train going through tunnel. Judgment \$5,000. Affirmed.

C. & A. R. R. Co. v. Dumser, 161 Ill. 191.

**Brakeman thrown off from flat car by jerking of engine.** Plaintiff was unnecessarily on said flat car. Judgment for

plaintiff. Reversed because of refusal of an instruction on contributory negligence.

*C. & A. R. R. Co. v. Rush*, 84 Ill. 570.

**Passenger riding in baggage car injured.** There was room in the passenger car for him—injured by overturning of baggage car. Judgment for plaintiff. Reversed.

*P. & B. I. Ry. Co. v. Lane*, 83 Ill. 448.

**Riding on platform of car.** The train plaintiff was riding in stopped on trestle bridge, plaintiff left his seat and went onto the back platform. While he was there the train started up with a sudden jerk throwing him off the car onto the trestle work and to the ice twenty feet below. Judgment for plaintiff. Reversed because of absence of instruction as to contributory negligence.

*R. R. I. & St. L. Ry. Co. v. Coultas*, 67 Ill. 398.

**Riding on platform of car.** Deceased was paying his fare to conductor on the platform of crowded car. The wind blew the money from his hand. In seeking to recover it he fell off the platform and was killed. Verdict directed for defendant. Affirmed.

*Quinn, Admx, v. I. C. R. R. Co.*, 51 Ill. 495.

#### **k. Run Down by Engine or Train.**

**Engineer run down in yards.** Got off his engine to get drink of water; looked both ways. Fast train of leasing company struck him. No bell; no headlight. Judgment for plaintiff. Affirmed.

*L. S. & M. S. Ry. Co. v. Enright*, 227 Ill. 403.

**Track repairer run down by engine.** Track repairer working at crossing—struck by engine. Kept watch in one direction only. Judgment \$12,500. Reversed and remanded for contributory negligence as a matter of law.

*The Belt Railway Company v. Skaszczak*, 235 Ill. 242 (2-07).



**Engine backed down on section hand—no warning.** Section hand directed by his foreman to clean switch on main track. An engine backed down on him without warning. No bell. Judgment for plaintiff. Affirmed.

I. I. & I. R. R. Co. v. Ostol, 212 Ill. 429 (12-04).

**Car inspector run down by engine.** Clerk of railroad company injured by being hit by engine while inspecting cars in switch-yard. It was part of his employment. Engineer blew whistle and halloed but plaintiff did not hear. Judgment for defendant directed by court. Affirmed.

George W. Wilson v. Ill. Cent. R. R. Co., 210 Ill. 603 (6-04).

**Employe working in yards run down by engine—Contributory negligence.** Switch tender of terminal railway company struck by engine of defendant while standing between tracks of defendant and terminal company. Had stepped back and was making an entry in note book. No warning of approach of defendant's engine. Judgment for plaintiff. Affirmed.

P. C. C. & St. L. Ry. Co. v. Kinnare, Admr, 203 Ill. 338 (6-03).

**Section hand removing hand car from track run down.** Section hand struck by engine while trying to get handcar off track. Foggy day. Could not see approaching train. Worked under direct supervision of foreman. Judgment for plaintiff. Affirmed.

I. C. R. R. Co. v. Atwell, Admx, 193 Ill. 200 (10-02).

**Child run over by train.** Had been running along side of train touching the cars. Slipped and fell under. Railroad company had dumped piles of clay along the track which attracted children to play there. Declaration was for negligence in leaving the clay piles there several weeks and thereby causing children to play near the track. Peremptory instruction for defendant. Affirmed. Negligence not proximate cause

Segmour v. Union St. & T. Co., 224 Ill. 579.

**Employe cleaning cinder pit hit by engine.** Laborer employed by defendant company was cleaning out cinder pit. In-

experienced, but had seen work done and engine run over pit. Was struck by engine running over the cinder pit. Assumed risk. Judgment for plaintiff, Affirmed in appellate court; reversed in supreme court.

C. & A. R. R. Co. v. Bell, 209 Ill. 25 (4-04).

**Train ran down plaintiff on trestle bridge—excursion.** Minor sixteen years old was passenger on excursion train. In reaching grove walked over trestle, the train not going over. On returning was crossing trestle to get to car, when train backed onto trestle knocking plaintiff off. Brakeman saw plaintiff but made no attempt to stop the train. Wilful negligence shown. Judgment \$6,000. Affirmed.

Chicago Terminal Ry. Co. v. Agnes Gruss, 200 Ill. 195 (12-02).

**Excursionist run down on trestle.** Excursionist caught on trestle by train backing up. Same facts as in 200 Ill. 195. Judgment \$15,000. Affirmed.

C. T. T. R. R. Co. v. Kotoski, 199 Ill. 383 (10-02).

**Switching—child run over—placing “pins on track.”** Child, under seven years, placing “pins on the tracks.” Had gotten out of the way of one car “kicked” back. Did not see the rest of the train backing down at excessive speed. Right leg amputated. Judgment \$4,000. Affirmed.

I. C. R. R. Co. v. Jermigan, 198 Ill. 29 (10-02).

**Engine struck passenger just alighted from train.** Passenger had alighted from train and was crossing track to get out of station. Defendant knew passengers were alighting. Engine struck plaintiff. Leg amputated. Judgment \$10,000. Affirmed.

Pennsylvania Co. v. Reidy, 198 Ill. 9 (6-02).

**Engine struck passenger just off another train.** Passenger on train used to carry workmen home, was struck by engine on another track while leaving the car. Had gone two steps. Pas-

sengership continues until outside station. Judgment for plaintiff. Affirmed.

C. T. T. R. R. Co. v. Schmelling, 197 Ill. 619 (6-02).

**Trying to escape one train stepped before another—station.** Passenger train run by lessee of defendant. Plaintiff was waiting for train at a place where it was customary to board trains, though there was no platform. In seeking to escape one train she stepped in front of another. Judgment for plaintiff. Affirmed.

C. & W. I. R. R. Co. v. Doan, 195 Ill. 168 (2-02).

**Foot caught in rail—run down.** Deceased's foot caught in opening between plank and rail. Run down by engine—no bell—high speed. Judgment \$1,000. Affirmed.

C. & A. R. R. Co. v. Smith, Admr, 180 Ill. 453 (6-99).

**Lady struck by fast train.** The gates were down and she was seeking to pass under them. The train was running at unusual and prohibited speed. Action was begun by her adult children. Judgment \$3,000. Affirmed. Not negligence per se to pass under railroad gates when they are down.

C. & W. I. Ry. Co. v. Ptacek, Admr., 171 Ill. 9 (62 Ill. App. 375, affd).

**Run down by locomotive.** Carpenter employed by railroad company was constructing a drain near the track. Train ran up at prohibited speed and struck him. Violation of speed ordinance. Judgment \$3,500. Affirmed. Railroad employees are protected by speed ordinance of city.

E. St. L. C. Ry. Co. v. Eggman, Admr., 170 Ill. 538 (71 Ill. App. 32, affd).

**Lady crossing track to catch train going north hit by train going south.** Was watching her train; did not see train behind her. Killed. Judgment \$5,000. Reversed no negligence of defendant shown. Due care not shown.

C. & E. J. R. R. Co. v. Chancellor, 165 Ill. 432.

**Run down by railroad train at depot.** Plaintiff was crossing track to get in car going out on Northern Pacific track. Train of defendant on track nearer depot, from opposite direction, struck plaintiff. High speed. Judgment \$6,000. Affirmed.

C. St. P. & K. C. Ry. Co. v. Ryan, 165 Ill. 89.

**On railroad bridge—struck by locomotive.** Judgment \$2,500. Affirmed.

Pierce, Receiver, v. Walters, 164 Ill. 560.

**Run down in railroad yards.** Watchman killed. Was standing by tracks loading revolver. No bell—no lookout. Violation of ordinance. Judgment \$5,000. Affirmed.

St. L. A. & T. H. R. R. Co. v. Eggmann, Admr, 161 Ill. 155.

**Child two years old sitting on railroad track hit by train.** The mother saw train and shouted and waved her hands. Engineer saw her but did nothing to stop, or blow whistle until he saw the child, which was too late. Child had strayed away. Mother tending sick child. Judgment \$1,500. Affirmed.

C. & A. R. R. Co. v. Logue, 158 Ill. 621.

**Run down by engine in yards.** Brakeman crossing tracks. Very stormy day. Had been instructed not to cross tracks. No bell. Much used tracks. Deceased had assisted in pushing car wheels across the tracks and was returning. Not regular employment. Judgment for plaintiff. Affirmed.

I. C. R. R. Co. v. Gilbert, 157 Ill. 354.

**Run down by engine on track in public street in night time.** No headlight—no bell—prohibited speed. Teamster. Right arm amputated. Wilful negligence. Judgment for \$5,000. Affirmed.

East St. L. C. Ry. Co. v. O'Hara, 150 Ill. 580.

**Run down on bridge.** Section man jumped from bridge to ground in attempt to escape approaching engine. Flagman

had flagged train, but engineer did not see the flag. Judgment \$5,000. Affirmed.

P. D. & E. Ry. Co. v. Rice, 144 Ill. 227.

**Run down by train.** Deceased was waiting for train at station. When same stopped he ran to get on and was struck by train on track he was crossing. Rainy, foggy day. High speed. Negligent arrangement of train schedule. Judgment for plaintiff. Affirmed.

Pennsylvania Co. v. Keane, Admx, 143 Ill. 172.

**Switchman run down by engine at junction of two railroad tracks on Kinzie street near Diller street, Chicago.** No bell. No whistle—no lookout. Deceased crossing track to get to switch. Rules of road required engines not to come ahead until signaled by the switchman. Judgment for plaintiff. Affirmed.

C. M. & St. P. Ry. Co. v. O'Sullivan, 143 Ill. 48.

**Run down by train.** Lady standing near track as train she expected to take was approaching from the south, was struck by engine backing south on adjacent track. Had no ticket. Trains were accustomed to stop here for passengers, but tickets were not sold. Was on right of way when struck. Permanent injury. Judgment for plaintiff. Affirmed.

L. S. & M. S. Ry. Co. v. Ward, 135 Ill. 511.

**Run down by locomotive.** Section hand killed while taking up old rails and putting down new ones. Boss told workmen not to watch for trains. Judgment for plaintiff. Affirmed.

C. St. L. & P. R. R. Co. v. Gross, 133 Ill. 37.

**Run down by engine on right of way.** Employe of city cleaning iron columns of a viaduct over the railroad right of way struck by passing engine and killed. No bell rung—engineer did not keep watch ahead. Violation of ordinance as to speed and bell. Judgment \$1,800. Affirmed.

C. & N. W. Ry. Co. v. Dunleavy, 129 Ill. 135.

**Snow plow passing on parallel track struck passenger who had jumped from the train he had been riding on when he saw the headlight of the snow plow and thought there was going to be a head-on collision. He would have been safe on the car, but got off thinking to avoid the collision. Judgment for plaintiff. Reversed on ground defendant's negligence not shown.**

**C. K. I. & P. Ry. Co. v. Felton, 125 Ill. 458.**

**Run down by engine in railroad yards. Section hand working on the track. Leg amputated. No warning of approach of engine. Original plaintiff died pending appeal. Judgment for plaintiff. Affirmed.**

**C. & E. J. R. R. Co. v. O'Connor, 119 Ill. 538.**

**Switchman run down by engine in yards while coupling cars and signaling. Prohibited speed contrary to ordinance. Killed. Judgment \$5,000. Affirmed.**

**L. S. & M. S. Ry. Co. v. O'Connor, 115 Ill. 255.**

**Section hand run down by engine in defendant's railroad yards. Judgment for plaintiff. Affirmed.**

**P. C. & St. L. Ry. Co. v. McGrath, 115 Ill. 172.**

**Section hand struck by detached part of passing train and killed. Stepped off track, but stepped on again after the first part of train passed. Could have seen the other part coming had he looked. Train had parted in transit unknown to crew. Judgment for defendant. Reversed in supreme court because of instruction telling the jury that certain acts of plaintiff would be contributory negligence.**

**Myers v. I. St. L. Ry. Co., 113 Ill. 386.**

**Run down by train in depot yards. Employe of Mich. Cent. R. R. Co. crossing I. C. R. R. tracks to get to his train. Was struck by I. C. train. Rule of company required engineer to ring bell. No bell rung. Train run at unusual hour. Looked**

and listened before crossing. Ankle broken, thigh fractured; permanent injury. Judgment \$5,000. Affirmed.

I. C. R. R. Co. v. Frelka, 110 Ill. 498.

**Run down in yards.** Engine switched cars across crossing with no light on rear—no lookout—no warning. Flagman protecting crossing was struck. Elbow crushed. Judgment for plaintiff. Reversed for refusal of instruction on fellow-servantship.

C. & E. J. R. R. Co. v. Geary, 110 Ill. 383.

**Run down by car on switch track.** Workman carrying lumber across side track to factory. Could have seen train if he had looked. Judgment \$1,500. Reversed because of instruction on comparative negligence.

C. B. & Q. R. R. Co. v. Johnson, Admr, 103 Ill. 512.

**Run down by train at depot.** Cold and dark night. Plaintiff was in depot waiting for train. Flagman shouted that train had arrived. Plaintiff started to cross track to get train, when he was struck by express train on the near track. Judgment for plaintiff. Affirmed.

Pennsylvania Co. v. Rudel, 100 Ill. 603.

**Child run down by engine and killed.** The mother had allowed child to stray onto railroad track while she was caring for her sick husband. Judgment for plaintiff. Reversed in supreme court on ground that the parent was guilty of contributory negligence.

C. W. & W. Ry. Co. v. Grable, 88 Ill. 441.

**Hand car struck by engine.** Plaintiff knew train was approaching and had time to get off the track. Whistle not blown. Judgment for plaintiff. Reversed.

I. C. R. R. Co. v. Modglin, 85 Ill. 481.

**Engine run without head light struck hand car.** Fence builder killed—three o'clock in afternoon. Judgment for defendant. Affirmed.

Burling, Admx, v. I. C. R. R. Co., 85 Ill. 18.

**Run down by train.** Boy six or seven years of age on his way to Sunday school with a brother ten years old, struck by train while crossing track. Train running at high speed was obscured by train in opposite direction. Deceased stumbled and fell on track. Judgment \$2,000. Affirmed.

C. & A. R. R. Co. v. Becker, 84 Ill. 483.

**Boy run over and killed by train.** Six years old—at street crossing—prohibited speed. Judgment \$2,500. Reversed because of instruction assuming facts and as to contributory negligence by a child.

C. & A. R. R. Co. v. Becker, Admr, 76 Ill. 25.

**Run down by engine**—laborer employed on tracks struck by engine—no warning or signal of the approach of the engine given—switch yards filled with tracks. Judgment \$3,500. Reversed, because of evidence that plaintiff had a family and was unable to support them by his labor since his injury.

P. Ft. W. & C. Ry. v. Powers, 74 Ill. 341.

**Run down by engine.** Plaintiff was struck by a car switched back by engine making a flying switch. Plaintiff was on the tracks of defendant going to depot. Judgment for plaintiff. Reversed because of instruction on due care by plaintiff.

I. C. R. R. Co. v. Hammer, 72 Ill. 347.

**Run down by train.** Dark and rainy morning—3:30 A. M.—deceased went to depot to signal train with lantern. Deceased was not seen or heard of by any one after signaling train until he was found dead on the track next morning. Judgment for plaintiff. Reversed because of erroneous instruction.

C. & A. R. R. Co. v. Mock, 72 Ill. 341.

**Killed by railroad train.** Evidence that deceased was intoxicated—no witness to accident. Bell ringing—head light burning. Judgment \$1,100. Reversed because of erroneous instruction.

I. C. R. R. Co. v. Cragin, 71 Ill. 177.



**Run down by train.** Deceased was walking parallel to track some distance ahead of approaching train—turned onto track just before the train reached him. Judgment \$5,000. Reversed because of instruction.

C. R. I. & P. Ry. Co. v. Austin, 69 Ill. 426.

**Run down by railroad train.** Deceased attempted to cross several tracks but was stopped by a passing train—was watching the train in front of him pass when a train on the track where he stood ran up at high speed and struck him. Place much traveled and noisy. Judgment \$1,700. Affirmed.

P. C. & St. L. Ry. Co. v. Knutson, 69 Ill. 103.

**Child struck by engine.** Was seven years old. Crossing a series of tracks. One leg amputated—hand crushed. Judgment \$7,000. Reversed for erroneous instruction as to comparative negligence.

C. & A. R. R. Co. v. Murray, 62 Ill. 326.

**Laborer crossing tracks run down.** Was on his way home after the day's work in defendant's shops. High speed; no bell or whistle. Judgment for defendant. Reversed because of erroneous instruction as to risk assumed.

Ryan v. C. & N. W. Ry. Co., 60 Ill. 171.

**Child five years old run down by train.** Mother had gone to milk, leaving child in care of sister eight years old. Child rendered idiotic by the injury. High speed. Judgment \$3,800. Affirmed.

C. & A. R. R. Co. v. Gregory, 58 Ill. 226.

**Track repairer run down.** Standing on one track waiting for train to pass. Cars were switched on track where he stood, without anyone on them to give warning, striking him. Judgment for plaintiff. Affirmed.

C. R. I. & P. Ry. Co. v. Dignan, 56 Ill. 487 (52 Ill. 325, distinguished).

**Track repairer at railroad crossing run down.** Stepped upon track in front of cars pushed by switch engine. Did not look out in that direction. Struck and killed. Judgment for plaintiff. Reversed, contributory negligence shown.

C. & N. W. Ry. Co. v. Sweeney, 52 Ill. 326.

**Intoxicated person sitting on track hit by train.** About dusk. No headlight on engine; no whistle. Track was laid along public street. Judgment for plaintiff. Reversed because plaintiff held guilty of gross negligence.

I. C. R. R. Co. v. Hutchinson, 47 Ill. 408.

**Run down by locomotive.** Child struck by engine while crossing track over right of way. Arm amputated. No bell or whistle. Trespasser. Discussion of contributory negligence. Comparative negligence rule established. Judgment \$2,000. Reversed because of instructions assuming permission to plaintiff to cross right of way.

G. & C. U. Ry. Co. v. Jacobs, 20 Ill. 478.

### **1. Switching.**

**Car switched back against car** in which laborers were living while repairing tracks. Car was on side track. Plaintiff was working near the car, baking bread for the gang. Was crawling under car to get to oven on opposite side. Leg and arm broken; left leg cut off; right foot crushed. Judgment \$5,000. Affirmed.

I. C. R. R. Co. v. Panebiango, 227 Ill. 170.

**Car switched back—brakeman coupling cars on side track injured.** For facts see 197 Ill. 440. Question of validity of release. Brakeman was coupling cars at one end of railroad yards. Switchman at other end kicked cars back against car he was coupling. Right hand amputated. Assumed risk. Judgment directed for defendant. Affirmed.

James Hartley v. C. & A. R. R. Co., 214 Ill. 78 (2-05).

**Car switched against car.** Plaintiff employed by Illinois Steel Company, was unloading car. Defendant ran other cars against car he was on, knocking him off. Judgment \$12,000. Reversed on ground that declaration did not state a cause of action and hence amendment after two years was bad.

*McAndrews v. C. L. S. & E. Ry. Co.*, 222 Ill. 232 (6-06).

**Car kicked against car plaintiff was unloading.** Laborer in construction gang unloading cinders and spreading them over road bed. Defendant ran other cars into cars being unloaded, knocking deceased off car. Judgment \$1,500. Affirmed.

*C. & E. I. R. R. Co. v. Kimmel*, 221 Ill. 547 (4-06).

**Cattle shipper killed in yards.** Cattle shipper examined his cattle in cars on side track. While walking around the end of a line of cars, engine "kicked" car back. The shock pushed last car against deceased, knocking him down. Had ticket in his pocket. Judgment \$2,300. Affirmed.

*E. J. & E. Ry. Co. v. Thomas*, 215 Ill. 158 (4-05).

**Section hand cleaning switch run down.** Section hand directed by his foreman to clean switch on main track. An engine backed down on him without warning. No bell. Judgment for plaintiff. Affirmed.

*I. I. & I. R. R. Co. v. Otstel*, 212 Ill. 429 (12-04).

**Car switched against car—man removing freight.** Plaintiff was moving his household goods by freight. Was removing them from car, when car switched back hit car he was in, throwing a safe over against plaintiff. Judgment for plaintiff. Reversed and remanded because of refusal to give instruction as to credibility.

*C. & E. I. Ry. Co. v. Burrige*, 211 Ill. 9 (6-04).

**Car backed against car workman was unloading.** Deceased was unloading material from cars. Engine backed down and struck him. No bell or warning. Amendment after two years. Judgment for defendant on plea of statute of limitations. Affirmed.

*Lizzie Mackey, Admx., v. Northern Milling Co.*, 210 Ill. 115 (6-04).

**Car kicked back injured man under car repairing. Contributory negligence.** Plaintiff was employed by elevator company. Side track of defendant ran to elevator. Car on elevator track was leaking corn. Plaintiff went under car to make repairs. Switch engine of defendant "kicked" a car back, striking car plaintiff was under. Plaintiff had thirty minutes before told engineer he was going under the car. Contributory negligence shown. Judgment \$7,500. Reversed and remanded.

*C. & A. R. R. Co. v. Pettit*, 209 Ill. 452 (4-04).

**Switch engine derailed injuring switchman.** Journal of switch engine, worn and weakened, gave way, derailling engine and injuring switchman of defendant. C. G. T. Ry. Co. leased tracks from another company. Judgment against both lessor and lessee. Affirmed. Full discussion of lessor's liability for negligence of lessee (104 Ill. App. 57, affirmed). Judgment \$6,000. Affirmed. Dissenting opinion of three judges.

*C. & G. T. Ry. Co. v. Hart*, 209 Ill. 414 (4-04).

**Engine backed against car deceased was repairing.** Employee was between cars repairing an air-brake. Engine backed against cars killing deceased. Deceased knew custom of switching. Had been employed in yard five months. Judgment for plaintiff. Affirmed.

*C. & E. I. R. R. Co. v. White, Admr*, 209 Ill. 214.

**Engine ran over cinder pit in which workman was employed.** Plaintiff worked for defendant cleaning out cinder pit. New at work and inexperienced. Engine had been run over pit to show him how cinders were dumped. Another engine ran over pit striking plaintiff before he saw it. Lost three fingers. Judgment for plaintiff. Reversed and remanded. Risk assumed.

*C. & A. R. R. Co. v. T. Bell*, 209 Ill. 25 (4-04).

**Car "kicked" back—struck car on which plaintiff worked.** Plaintiff was employed dumping "gondola" cars. Engine

backed against line of cars throwing plaintiff between cars. Foot crushed. Judgment \$3,000. Reversed and remanded because of instruction and evidence.

I. C. R. R. Co. v. Smith, 208 Ill. 608 (2-04).

**Switchman caught between cars—failure to warn.** Helper in one of two switching crews caught between car that ran off track and car standing on track. No warning to deceased that engine was backing up. Judgment \$5,000. Affirmed.

C. & E. R. R. Co. v. Driscoll, Admx, 207 Ill. 9 (12-03).

**Car switched back—stockman loading hogs.** Stock shipper was loading hogs onto car on switch track. Defendant backed an engine against the car throwing plaintiff to the ground. He stood in the door seeking to prevent hogs from getting out. Rib broken—ankle hurt. Judgment \$1,000. Affirmed.

I. C. R. R. Co. v. Anderson, Jr., 184 Ill. 295 (2-00).

**Car switched back onto siding.** Siding much used by public. Car "kicked" back without light or brakeman to control—night time—swinging car door struck women on right of way. Judgment for plaintiff. Affirmed. 1. Gross negligence shown. 2. Ordinance regulating trains. Admissible.

C. & A. R. R. Co. v. O'Neil, 172 Ill. 527.

**Car switched back—repairer injured.** Employee injured. Cars were standing on repair track. Deceased was one of the repair gang. Was underneath cars wiping motor by order of foreman. While he was there, the foreman ran another car in and against car deceased was under, fatally injuring him. Judgment \$1,800. Affirmed.

Met. West Side "L" Co. v. Skola, Admr, 183 Ill. 454 (2-00).

**Car kicked against car.** Switchman was coupling—hand caught. Plaintiff was a switchman employed by defendant in its railroad yards. Was coupling car onto a stationary car

when engine on the other end kicked car against stationary car without notice to plaintiff. The shock caught plaintiff's right hand and cut off fingers. Judgment for defendant by court's direction. Affirmed in appellate. Reversed in supreme. Fellow-servantship. Assumed risk. (See 214 Ill. App. 78.)

*James Hartley v. C. & A. R. R. Co.*, 197 Ill. 440 (6-02).

**Car kicked against car on which repairer was working.** Defendant owned and leased stock cars. Some of defendants cars were temporarily in C. N. W. R. R. Co.'s switch yards. Defendant had an inspector in Northwestern yards to inspect its cars. Plaintiff was a car repairer for defendant; was making repairs on a car standing still when the inspector ordered certain cars taken off the switch. The train crew removed several cars ordered out, and having transferred those needing repairs, kicked back the others onto same track where plaintiff was working. They struck the latter car, knocking plaintiff down and crushing his leg and foot. Defendant held negligent in not notifying plaintiff of the moving of the cars and kicking back of others. No assumed risk—no fellow-servantship. Judgment \$1,000. Affirmed.

*Streets Western Stock Car Line v. Bonander*, 196 Ill. 15 (4-02).

**Car kicked against car—workman knocked off—leg amputated.** Plaintiff was working on a car on side track. Engineer knew he was there. Ran against the car without warning knocking plaintiff off. Leg amputated. Judgment \$6,000. Affirmed.

*I. C. R. R. Co. v. Aland*, 192 Ill. 37 (10-01).

**Car switched back across street—pedestrian struck.** Plaintiff was crossing the tracks laid in a much travelled place. The evidence was conflicting as to the place being a public highway. Judgment \$2,000. Affirmed. What is sufficient proof of public highway.

*Union Stock Yards Co. v. Karlick*, 170 Ill. 403 (64 Ill. App. 604, affd).

**Switching**—car kicked back against car being pushed by deceased. He was behind car and could not see the switched car. Judgment \$4,600. Affirmed.

C. & A. R. R. Co. v. Anderson, 166 Ill. 572.

**Car kicked back on switch.** Workman crossing series of tracks in stock yards run down. Place used by workmen. Could have gone round by safe way. Judgment \$10,000. Affirmed.

P. Ft. W. & C. Ry. Co. v. Callaghan, 157 Ill. 406.

**Switching.** Lumber piled on coal car had shifted so as to extend out at one end of the car. Deceased was a helper, nineteen years old. While seeking to couple the coal car and another car, the lumber struck him. Knocked under car. Judgment \$2,300. Affirmed.

I. C. R. R. Co. v. Reardon, 157 Ill. 372.

**Switching.** Car switched onto side track. Car repairer repairing car on side track injured. Judgment \$3,000. Affirmed.

St. L. A. & T. H. R. R. Co. v. Holman, 155 Ill. 21.

**Caught between trains on adjacent tracks,** going in opposite directions. Passenger in charge of a stallion went to freight car where horse was, to close door. While seeking to close door which was defective, another train switched in on near track. Space between tracks was eight feet. Judgment \$2,000. Reversed and remanded because of erroneous instruction as to defendant's negligence.

C. & A. R. R. Co. v. Rayburn, 153 Ill. 290.

**Switching**—car "kicked" back. Struck section hand removing hand-car from track. Fingers of left hand amputated. No brakeman on the car. Judgment for plaintiff. Affirmed.

L. S. & M. S. Ry. Co. v. Hundt, 140 Ill. 525.

**Car kicked back against car being moved by workman with crowbar.** Workman's arm caught between the cars when they collided. Arm amputated. Judgment \$6,000. Affirmed.

Pennsylvania Co. v. Backes, 133 Ill. 255.

**Car repairer repairing car in repair yard injured.** Was under car when engine backed down and coupled onto the car while plaintiff was underneath. Rule of company required repairer to place blue flag at ends of car he was repairing. No flag displayed. Verdict for plaintiff but judgment was entered on the special findings for defendant. Reversed in supreme court on ground that rule as to flags did not apply to cars placed as was the one plaintiff was repairing.

**Quick v. I. & St. L. Ry. Co.,** 130 Ill. 334.

**Switching.** Flying switch resulted in collision between engine and caboose. The engine was thrown forward onto side track against a car into which section men were loading iron. Section man killed. Judgment for plaintiff. Affirmed.

**C. & A. R. R. Co. v. Kelly,** 127 Ill. 638.

**Switching—car backed against car on side track on which deceased was working.** No warning. Judgment \$5,000. Affirmed.

**C. & N. W. Ry. Co. v. Goebel,** 119 Ill. 516.

**Cars on side track started suddenly without notice.** Plaintiff was car washer employed by defendant. Was about to get on the car to perform his duties; thrown from car steps by the jerk. Negligence of engineer. Leg amputated. Judgment for plaintiff. Affirmed.

**C. & W. I. R. R. Co. v. Bingenheimer,** 116 Ill. 226.

**Switching. Shipper in railroad yards consulting with yardmaster as to his cars.** Was struck by car thrown onto side track by "flying switch." Yardmaster knew the flying switch was about to be made but did not warn plaintiff. Arm amputated. Judgment \$7,000. Affirmed.

**I. C. R. R. Co. v. Haskins,** 115 Ill. 302.

**Car switched back onto side track struck car which plaintiff was unloading.** Knocked down—leg broken. No bell or warn-



ing. Employee of defendant unloading rails. Cars owned by defendant. Judgment for plaintiff. Affirmed.

Rolling Mills Co. v. Johnson, 114 Ill. 59.

**Inspector under car in yards killed by car switched against car he was inspecting.** No bell or warning. Deceased did not place blue flag on car as required by rule of the company. Judgment \$3,000. Reversed.

Pennsylvania Co. v. Stoelke, Admr., 104 Ill. 291

**Switching. Watchman struck by engine in yards while performing his duties.** No light on engine—high speed contrary to ordinance. Killed. Judgment \$5,000. Affirmed.

Pennsylvania Co. v. Corlan, 101 Ill. 93.

**Switching.** Person standing on main track stepped back on a side track to let engine pass—car switched back on side track struck him. Judgment for plaintiff. Reversed because of erroneous instruction on contributory negligence.

I. C. R. R. Co. v. Hammer, 85 Ill. 526.

**Track repairer run down by an engine switched back on track where he was repairing car.** Demurrer to declaration sustained. Affirmed on ground that fellow servanthship was shown.

Valtez v. O. & M. Ry. Co., 85 Ill. 500.

**Switchman's foot caught between rail and ground.** Leg cut off by passing train. Plaintiff familiar with the premises. Judgment for defendant. Affirmed.

Foster v. C. & A. R. R. Co., 84 Ill. 164.

**Switchman run down by moving car in switch yard—plaintiff was struck while walking backwards giving signal to engineer.** Judgment \$5,000. Reversed on the ground that plaintiff did not exercise ordinary care.

C. & N. W. Ry. Co. v. Donahue, 75 Ill. 106.

**Car repairer injured.** Was under car repairing it when person pushed another car down the track against the car he was

under. They could not stop the car after it had started going—hand cut off. Action against employer of persons moving car. Judgment \$3,000. Affirmed.

Noble v. Cunningham, 74 Ill. 51.

**Switching.** Horse hauling goods in railroad yards became frightened at an engine passing on nearby track and backed the wagon into engine. Driver thrown out—arm crushed by engine. Died two days afterwards. Judgment \$4,400. Reversed because of instruction on comparative negligence.

C. & N. W. Ry. Co. v. Clark, 70 Ill. 276.

**Switching.** Struck by a car while attempting to open switch to make a flying switch—dark night,—no light on the car. The engineer had whistled for the opening of the switch and switchman rushed out with lantern to open same. Judgment for plaintiff \$5,000. Affirmed.

C. & N. W. Ry. Co. v. Taylor, 69 Ill. 461.

**Switching.** Plaintiff was employed as a switchman by defendant, stood on front end of a car pushed by engine, had signaled the engineer to slow up car. Car stopped with a sudden jerk which threw plaintiff upon the track under car—leg and arm cut off. Engine was shown to be defective. Judgment \$10,000. Reversed because of instruction holding railroad company to too high a degree of care in providing safe appliances.

C. C. & I. C. Ry. Co. v. Troesch, 68 Ill. 545.

**Car switched back.** Plaintiff was unloading a car on a side track when a freight train backed down against the car he was unloading knocking him off car and causing his death. Judgment \$3,000. Affirmed.

I. C. R. R. Co. v. Hoffman, 67 Ill. 287.

**Laborer thrown off car.** Laborer employed by defendant was sitting on flat car loaded with dirt. Car stood on a bridge. The train had been separated to facilitate unloading—the engineer

ran the train together without warning causing the accident. Evidence tended to show engineer was intoxicated. The engineer had charge of the train. Judgment for plaintiff. Affirmed.

C. & A. R. R. Co. v. Sullivan, 63 Ill. 293.

**Run down in switch yard.** Car repairer walking along track to get car he was assisting in repairing was hit by switch engine bringing up more cars for repairer. Held fellow-servants though receiving order from different foremen. Judgment for plaintiff. Reversed.

C. & A. R. R. Co. v. Murphy, 53 Ill. 336.

**Car switched back against car on side track** in which plaintiff was unloading coal. Judgment \$1,000. Affirmed.

I. C. R. R. Co. v. Shultz, 64 Ill. 172.

**Switching.** Engine made "flying switch" in populous part of city. No brakeman at the brake of car; no one on car to watch ahead. Deceased was on the right of way when struck, but right of way was in a public street. Judgment for plaintiff. Reversed because of instruction misstating rule as to comparative negligence.

I. C. R. R. Co. v. Baches, 55 Ill. 380.

**Switching.** Deceased was unloading a coal car, when defendant switched cars back against car he was in, throwing him under the cars. Judgment \$5,000. Reversed for excessive damages.

I. C. R. R. Co. v. Weldon, 52 Ill. 290.

**Laborer unloading car—car suddenly jerked ahead.** He was thrown down and injured. Negligence of engineer in pulling ahead without warning. Judgment for plaintiff. Reversed because of instruction ignoring fellow-servant rule.

C. & A. R. R. Co. v. Keefe, 47 Ill. 108.

**m. Train Derailed.**

(See also DEFECTIVE CARS, etc.; DEFECTIVE TRACK, *infra*.)

**Train ditched—following train ran into.** Defective journal ditched one train, another train on which plaintiff was fireman ran into the ditched train. Oncoming train not duly warned of danger. Judgment \$8,000. Reversed and remanded on ground statute of limitations barred amended count on which recovery was had.

*The Wabash R. R. Co. v. Bhymer*, 214 Ill. 579 (4-05).

**Rail taken out by section men—freight train derailed.** Engineer of freight train killed by train being derailed. Section man had taken out rail and failed to notify the engineer of coming freight train. Judgment \$5,000. Affirmed.

*C. & A. R. R. Co. v. Eaton, Admx.*, 194 Ill. 441 (2-02).

**Train derailed—negligence of engineer.** Baggage-man injured—car turned over. Judgment \$14,000. Affirmed. 1. Pleadings need not aver no fellow-servantship. 2. Baggage-man and engineer not fellow-servants (162 Ill. 215 explained, 70 Ill. App. 331—affirmed).

*C. & A. R. R. Co. v. Swan*, 176 Ill. 424 (12-98).

**Train derailed—cattle on track—defective cattle guard.** Engineer killed—engine derailed by striking cattle strayed on track in absence of cattle guard or fence. Judgment for plaintiff. Affirmed. 1. Act requiring cattleguards. 2. Engineer not required to know of absence of.

*T. H. & I. Ry. Co. v. Williams, Admx.*, 172 Ill. 379 (2-98).

**Derailed car struck tower house—tower man injured.** Track defective. Judgment \$9,000. Affirmed.

*L. S. & M. S. Ry. Co. v. Conway*, 169 Ill. 505.

**Train ran into cow and was derailed.** Passenger injured. Right of way not properly fenced—cattle guards defective. Boy four years old ruptured. Friendly suit and judgment for \$250.

On motion this was set aside and a regular trial had. Judgment \$2,500. Affirmed.

A. T. & S. F. R. R. Co. v. Elder, 149 Ill. 173.

**Train derailed. Passenger injured.** Employe of stock shipper, riding in car with horses, thrown against end of car. Agreed not to ride with horses. Judgment \$1,000. Affirmed.

C. B. & Q. R. R. Co. v. Dickson, 143 Ill. 368.

**Train derailed. Passenger injured. Broken rail.** Judgment for plaintiff affirmed.

P. P. & J. R. R. Co. v. Reynolds, 88 Ill. 418.

**Cow ran in front of engine. Train derailed. Passenger injured.** High speed. Engineer knew cattle came about the station in search of corn scattered there. No bones broken. No permanent injury. Judgment \$5,000. Reversed as excessive.

C. R. I. & P. Ry. Co. v. McAra, 52 Ill. 296.

**Train derailed.** Construction train conveying laborers to work ran off track. Rail defective. Car overturned. Plaintiff, a laborer, was in car. Leg broken. Averment he was a passenger. Judgment \$4,000. Reversed because of variance evidence showing plaintiff was not a passenger.

Moss v. Johnson, 22 Ill. 633.

**Passenger jumped from derailed car.** The facts here are the same as in the G. & C. U. R. R. Co. vs. Yarwood, 15 Ill. 468. The injury arising out of same accident. Judgment \$2,500. Reversed on ground of contributory negligence.

G. & C. U. R. R. Co. v. Fay, 16 Ill. 558.

**Passenger jumped from car which was derailed and was injured.** The passenger cars were full. Plaintiff rode in baggage car by request of conductor. Leg broken. Had been running back and forth in cars scuffling with other passengers. Judgment \$1,000. Reversed for refusal of instruction on due care.

Galena & Chicago Union R. R. Co. v. Yarwood, 15 Ill. 468.

**n. Trespassers and Licensees.**

**Licensee on right of way** was seeking to drive his cattle off the track. Engine struck a calf and threw it against plaintiff breaking his leg. Amputation. No bell or whistle. No cause of action. Demurrer to declaration sustained in circuit court. Affirmed.

Thompson v. C. C. C. & St. L. Ry. Co., 226 Ill. 542.

**Workman on right of way by license; run down.** Deceased employed by electric light company attending to lights. One light was on defendant's right of way. Carbons were changed daily. Deceased was struck by a switch engine as he stood near the track near lamp. No bell. Track was obscured by steam from another engine that had just passed. Suit by administratrix. Judgment for plaintiff. Affirmed.

E. J. & E. R. R. Co. v. Hoadley, Admx, 220 Ill. 463 (2-06).

**Walking on track in public street.** Plaintiff was walking on railroad track laid in public street. Looked for train but saw none. Heard whistle, turned and was hit. Track used daily by many people. No warning. High speed. Not a trespasser. Judgment \$1,329. Affirmed.

Ill. Terminal Co. v. Mitchell, 214 Ill. 151.

**Walking on right of way—customary path.** Deceased was walking on a cinder pit between tracks which was used for travel generally. Turned to cross track. Engine ran up at prohibited speed and without warning, striking deceased. Judgment for plaintiff. Reversed and remanded for erroneous instruction (dissenting opinion).

I. C. R. R. Co. v. Eicher, Admx, 202 Ill. 556 (4-03).

**Getting on moving train.** Passenger fell under moving car while attempting to get on. Conductor encouraging attempt. Got off to re-check baggage. Judgment \$5,300. Affirmed.

C. & A. R. R. Co. v. Gore, 202 Ill. 188 (4-03).

**Trying to get on moving train.** Passenger got off to buy ticket at station. Brakesman agreed to hold train. Train started. Plaintiff injured trying to get on moving train. Judgment for plaintiff. Affirmed.

C. & A. R. R. Co. v. Flaherty, 202 Ill. 151 (4-03).

**Licensee stumbled over ladder on platform.** Boarding house keeper delivered meals to mail clerks at defendant's depot. Platform dark—no lights. Stumbled over ladder belonging to defendant and fell. Judgment \$1,000. Affirmed.

I. C. R. R. Co. v. Malissa Hopkins, 200 Ill. 122 (12-03).

**Running to catch—fell on track.** Lady having round trip ticket ran to catch what she thought was her train. Stumbled and fell on track. Ankle crushed. Judgment \$10,000. Reversed for contributory negligence.

Weeks v. C. & N. W. R. R. Co., 198 Ill. 551 (10-02).

**Man unconscious on track—engine ran over him.** Deceased, for causes unknown, fell unconscious on railroad track. Engine ran over him. Fireman saw something on track 1400 feet away but did not notify engineer until 300 feet from object. Train could stop in 125 feet. Speed eighteen miles an hour. Peremptory instruction for defendant. Reversed and remanded in supreme court. Duty of railroad company to trespassers.

Martin, Admr, v. C. & N. W. Ry. Co., 194 Ill. 138 (12-01).

**Trespasser—boy stealing a ride put off.** Colored boy thirteen years old was stealing a ride. Riding on the iron rods under the car. Brakesman pulled boy out and in doing so, boy's foot got under wheel—amputated. Duty of railroad company to trespassers. Contributory negligence not in issue. Willful negligence. Judgment \$2,000. Affirmed.

I. C. R. R. Co. v. King, 179 Ill. 91 (4-99).

**On right of way—place of public travel—run down.** Workman seeking employment at McCormick Reaper Works, stood on right of way in front of gate. Run down by locomotive.

Custom for workmen to gather there. Known to defendant. Tracks planked—only entrance to works. Was not a trespasser. Judgment \$7,500. Affirmed.

C. B. & Q. R. R. Co. v. Murowski, 179 Ill. 77 (6-99).

**Trespasser put off train—stealing ride.** Railroad company not liable for mere negligence—must be willful. Judgment \$700. Reversed (78 Ill. App. 236—reversed).

Wabash R. R. Co. v. Kingsley, 177 Ill. 558 (2-99).

**On railroad right of way. Run down by engine.** Plaintiff was carrying dinner to a fireman in the switching yards of the defendant. While searching through the yards for the engine on which the foreman worked, he was struck by an engine coming up behind him at a speed prohibited by the ordinance of the city. Judgment \$6,500. Affirmed.

E. St. L. C. Ry. Co. v. Reames, 173 Ill. 582 (75 Ill. App. 28, aff'd).

**On right of way—used by public.** Woman standing on side of track was struck by a swinging car door on a car that had been kicked back without a light on it or a brakesman to control it. The siding was used by the public. Held gross negligence shown. Judgment for plaintiff. Affirmed.

C. & A. R. R. Co. v. O'Neil, 172 Ill. 527 (64 Ill. App. 623, aff'd).

**On right of way—trespasser hit by train.** Engineer saw him. Boy eight years old. Track much used as foot path. Judgment for plaintiff. Reversed because of evidence of custom to use track.

Wabash Ry. Co. v. Jones, 163 Ill. 167.

**Workman getting on freight car thrown under by sudden jerk of car.** Car defective in appliances for getting on. Foot cut off. Question whether engineer was fellow-servant. Judgment \$2,000. Affirmed.

L. E. St. L. R. R. Co. v. Hawthorn, 147 Ill. 226.

**On right of way. Trespasser struck by engine that came up from behind.** Judgment directed for defendant. Affirmed.

Boden v. C. & G. T. Ry. Co., 133 Ill. 72.



**Plaintiff riding on platform steps of baggage car.** Step struck obstacle and was broken off, throwing plaintiff to ground. Had no ticket—had not paid fare. Leg amputated. Judgment \$6,000. Reversed in supreme court because of instruction ignoring whether plaintiff was passenger or trespasser.

**C. B. & Q. R. R. Co. v. Mehlsack**, 131 Ill. 61.

**On right of way.** Boy sixteen years old employed at car shops, struck by engine and killed while crossing tracks in yards on his way home to dinner. Prohibited speed. No watch—no lookout—no bell. Verdict directed for defendant. Affirmed.

**Blanchard v. L. S. & M. S. Ry. Co.**, 126 Ill. 417.

**Boy seven years old riding on engine by invitation of engineer.** Put off or fell off while trying to get off after being ordered to get off by the engineer. Judgment for plaintiff. Affirmed.

**C. M. & St. P. Ry. Co. v. West**, 125 Ill. 320.

**Boy run down by train on right of way.** Conflict as to whether he was at crossing or on right of way. Leg amputated. Judgment for plaintiff. Reversed because of instructions assuming negligence not proven.

**C. R. I. & P. Ry. Co. v. Eininger**, 114 Ill. 79.

**Passenger attempted to get on train after it started.** The momentum threw his body against the side of step. The conductor got on at same time and when plaintiff got onto the platform violently assaulted him. Judgment \$10,000. Reversed because of bad instruction allowing exemplary damages and on negligence of defendant.

**W. St. L. & P. Ry. Co. v. Rector**, 104 Ill. 296.

**On railroad right of way.** Deceased was walking in yards between tracks. Struck by engine running up behind him, which he stepped in front of. Deceased had used the track going and coming from work for years. Not shown that engineer saw deceased. Judgment for defendant. Affirmed.

**Austin, Admx, v. C. R. I. & P. R. R. Co.**, 91 Ill. 35.

**Trespass on right of way of railroad.** Struck by engine—persons had shouted to him—no evidence of wanton negligence. Judgment \$5,000. Reversed.

L. S. & M. S. R. R. Co. v. Hart, 87 Ill. 529.

**Trespasser on right of way—run down by train—willful negligence not shown—no recovery.**

I. C. R. R. Co. v. Hetherington, 83 Ill. 510.

**Run down on right of way by engine.** Deceased was walking on track laid in public street—stepped off one, to the adjacent track to escape engine and was hit by engine coming from opposite direction. Judgment for plaintiff. Reversed on the ground that plaintiff assumed the risk of injury from walking in dangerous place.

I. C. R. R. Co. v. Hall, 72 Ill. 222.

**Trespasser on right of way—run down by a switch engine.** The public had been in the habit of using the right of way for a number of years without objection by the company. Plaintiff had used the track for several years—not shown that engineer saw plaintiff. Judgment for plaintiff. Reversed on ground that he was a trespasser.

I. C. R. R. Co. v. Godfrey, 71 Ill. 500.

**Boy catching on car fell under car being pushed by engine—Brakeman on car to watch track ahead.** Judgment for plaintiff. Reversed—verdict against weight of evidence (same case 55 Ill. 365).

C. B. & Q. Ry. Co. v. Stumps, 69 Ill. 409.

**Boy stealing ride on freight car killed—Boy ten years old was riding on the steps of a moving car when a car cleaner employed by defendant struck his fingers causing him to let go. He fell under the cars and was killed. It was part of the cleaners duty to keep trespassers off the cars.** Judgment for plaintiff. Affirmed.

N. W. Ry. Co. v. Hack, 66 Ill. 238.

**Catching on car fell under car being pushed by engine.** Brakeman ahead to watch track. Judgment for plaintiff. Reversed, defendant's negligence not shown.

C. B. & Q. Ry. Co. v. Stumps, 55 Ill. 367. (Same case 69 Ill. 409.)

**Boy "catching" on to freight car injured.** The car was standing on side track. Yardmaster went on top and unloosened brake. Car being on grade began to move. Boy was on ground when yardmaster went up ladder. Judgment for plaintiff. Reversed on ground defendant's negligence not shown, it not appearing defendant knew plaintiff was in danger.

C. & A. R. R. Co. v. McLaughlin, 47 Ill. 265.

#### **o. Miscellaneous.**

**Girl injured while playing with a railroad turn table.** Thirteen years old; bright and intelligent. Had been warned by employees of company and ordered away from turn table. Leg and foot crushed. Judgment \$2,000. Reversed and remanded because of instruction on contributory negligence. (196 Ill. 526 followed).

L. E. & W. R. R. Co. v. Klinkrath, 227 Ill. 439.

**Caught foot in hole in floor of depot—fell.** Plaintiff caught foot in hole in floor of defendants depot. Fell and was injured. Night watchman had opened depot door for her. Had bought round trip ticket. Waiting for train. Judgment \$4,000. Affirmed.

C. & A. R. R. Co. v. Walker, 217 Ill. 605 (10-05).

**Killed in Missouri—action in Illinois.** Deceased killed in Missouri in railroad accident. Construction of Missouri statute. Judgment for defendant. Affirmed.

Ralsor v. C. & A. R. R. Co., 215 Ill. 47 (4-05).

**Timber stuck out from lumber car.** Piece of timber stuck out some distance from car on which it had been loaded. Plaintiff was standing on the platform and was hit by end of

the timber as car passed. *Res ipsa loquitur*. Judgment for plaintiff. Reversed and remanded—defendant's negligence not shown.

*C. & E. I. Ry. Co. v. Reilly*, 212 Ill. 506 (12-04).

**Bridge gave way—release.** Bridge gave way wrecking train and injuring passenger. Release declared void for fraud. Judgment \$1,000. Affirmed.

*Q. D. & W. Ry. Co. v. Fowler*, 201 Ill. 152 (2-03).

**Switchman getting on engine—slipped and fell.** Switchman of one year's experience was trying to climb on to tender of engine. Missed his hold and fell under engine. Engine constructed in unusual manner. Judgment \$5,000. Reversed and remanded—contributory negligence, as a matter of law, shown.

*C. I. & L. Ry. Co. v. Barr, Admr*, 204 Ill. 163 (10-03).

**Switchman fell under car.** Switchman fell or was thrown under car and killed. No facts. Section 57—Practice Act construed. Judgment \$4,000. Affirmed.

*Ill. Central Ry. Co. v. Johnson, Admx*, 191 Ill. 594 (10-01).

**Running for train—fell in front of engine.** Lady having round trip ticket ran to catch what she thought was her train. Stumbled and fell on track. Ankle crushed. Judgment \$10,000. Reversed for contributory negligence.

*Weeks v. C. & N. W. Ry. Co.*, 198 Ill. 551 (10-02).

**Brakesman hit by chute extending from car.** Brakesman on platform directing stopping of car struck by a chute used for unloading express, which express employes had allowed to extend out from the express car. Customary to place chute in car lengthwise. Judgment for plaintiff. Affirmed.

*American Ex. Co. v. Risley*, 179 Ill. 295 (4-99).

**Watchman run down by engine.** No head-light—ahead of time. Deceased was riding over trestle on a railroad veloci-

pede. Judgment for plaintiff. Affirmed (71 Ill. App. 54—affirmed).

B. & O. R. R. Co. v. Alsop, Admx, 176 Ill. 470 (12-98).

**Obstacle on track**—Yard master riding on foot board, thrown down, leg amputated. Broken draw bar had fallen from car. Had been broken by careless switching four hours before. Judgment \$6,000. Affirmed. Construction notice of obstacle on track.

C. & N. W. Ry. Co. v. Delaney, 169 Ill. 581.

**Boy catching on freight train** fell under. Judgment \$20,000. Reversed—injury held caused by plaintiff's own act.

Borg v. C. R. I. & P. Co., 162 Ill. 348.

**Ashes and cinders piled near track on street.** Boy standing near track waiting for train to pass, slipped on the cinders or they gave way under him, and he fell under the car and was killed. Judgment \$1,500. Affirmed.

C. & A. R. R. Co. v. Nelson, 153 Ill. 89.

**Foot caught between rail and sidewalk**—between rails of track. Engine ran over foot so caught. Amputation required. Space between rail and plank too wide. No head-light. Judgment \$1,000. Affirmed.

T. St. L. & K. C. R. R. Co. v. Clark, 147 Ill. 171.

**Crowded off excursion train**—overloaded. Passenger was crowded off and fell against truck on the platform placed near the track. Four trials. Judgment \$16,000. Affirmed.

C. & H. R. R. Co. v. Fisher, 141 Ill. 615.

**Wrecking crew removing wrecked train from track.** Had lifted a car floor and placed props under it by order of the foreman. Before plaintiff could get from under the props slipped and the floor fell upon him; ankle fractured. The foreman had charge of all the men. Judgment for plaintiff. Affirmed.

W. St. L. & P. Ry. Co. v. Hawk, 121 Ill. 259.

**Inspector of freight cars injured in yards of railroad company** owing to negligence of engineer in starting so suddenly while plaintiff was between two cars that the coupling parted throwing plaintiff to the ground. Inspection always began after train stopped. Judgment for plaintiff. Affirmed.

C. & A. R. R. Co. v. Hoyt, 122 Ill. 369.

**Thrown off car while unloading stone.** Foreman ordered laborer upon car before engine was detached. Engine started ahead with a jerk, throwing deceased between cars. Judgment \$3,041.66. Affirmed.

C. B. & Q. R. R. Co. v. Bell, 112 Ill. 360.

**Passenger injured. Car crowded.** Another car was added to front end of train. The conductor invited passengers to go from the crowded car to the added one. Plaintiff attempted to go from platform to platform when the forward car was jerked ahead by the engine starting. The cars parted owing to insecure coupling, and plaintiff fell between. Judgment for plaintiff. Affirmed.

H. & St. J. R. R. Co. v. Martin, 111 Ill. 219.

**Piece of coal fell off passing engine and hit section man** who stood at side of track, six feet from the rail. Action by widow. Judgment for plaintiff. Reversed because of instruction stating who are not fellow-servants. (See 93 Ill. 302.)

C. & N. W. Ry. Co. v. Moranda, 108 Ill. 576.

**Workman caught between a car and lumber that fell from a "Rubble" car.** Gang of men were moving both cars. Two of the gang held the lumber from falling off the "Rubble" car. The boss of the gang told them to let go of the lumber. They did so and it fell upon deceased. Judgment \$3,250. Reversed on the ground that the boss was a fellow-servant of deceased.

C. & A. R. R. Co. v. May, 108 Ill. 288.

**High board fence along railroad track.** Employees of railroad had left a pile of lumber between the track and fence.

**A passing engine struck the lumber and forced a plank through the fence, striking plaintiff who was walking in the street on the other side of the fence. Leg broken, ankle dislocated. The train ran on leased track. Judgment \$2,500. Affirmed.**

**W. St. L. & P. Ry. Co. v. Peyton, 106 Ill. 534.**

**Cow on track. Engine ran into, derailing train, passenger injured. Failure to keep lookout ahead. Conflict as to mist and rain hiding cow from view. Judgment \$1,125. Affirmed.**

**I. V. & W. Ry. Co. v. Hall, 106 Ill. 371.**

**Inspector of cars killed—was stooping down to examine the wheels of a car slowing down at station. Baggage master was pushing load of trunks along the platform. Trunk fell off hitting inspector and knocking him under the car. Both men employed by railroad company. Judgment for plaintiff. Affirmed.**

**I. & St. L. Co. v. Morgenstern, 106 Ill. 216.**

**Personal injury case against receiver. Cannot be brought in chancery. The proper procedure is to first sue the receiver and if damage is secured, then file bill in equity to subject the company's property to the judgment. Bill dismissed. Affirmed.**

**Brown, Adm., v. Wabash Ry. Co., 96 Ill. 297.**

**Crawling across sidewalk, under train—run over. Freight train stood on crossing, between plaintiff and depot. While attempting to go under the cars, the train started and his foot was caught. Lockjaw resulted in death. Conductor told him he had time to go under cars. Judgment \$5,000. Reversed because of involved instruction for plaintiff—and on damages.**

**C. B. & Q. R. R. Co. v. Sykes, 96 Ill. 162.**

**Lump of coal fell off engine or was thrown off by fireman and hit section hand on side of track waiting for train to pass, causing his death. Judgment \$5,000. Reversed because of evidence that wife and children were dependent on deceased for support. (See 108 Ill. 576.)**

**C. & N. W. Ry. Co. v. Moranda, 93 Ill. 302.**

**Door placed between two cars**, to be used in moving freight from car to car. Broke while plaintiff was using same, throwing him to the ground. Had used door for this purpose for two years and knew the risks of so doing. Shoulder dislocated. Defendant did not authorize use of door. Judgment \$6,000. Reversed on ground that the risk was known and assumed.

*Pennsylvania Co. v. Lynch*, 90 Ill. 333.

**Injury on railroad—no facts**—an instruction was given saying that where defendant sets up contributory negligence as a defense, he must prove it by preponderance. Held not the law. Judgment for plaintiff. Reversed for instruction requiring defendant to prove contributory negligence.

*I. & St. L. R. R. Co. v. Evans*, 88 Ill. 63.

**Defective cattle guard—cattle got on track—train derailed.** The railroad company failed to provide cattle guard as required by statute. Engineer killed. Action by administrator. Judgment for plaintiff affirmed. Statute as to cattle guards considered. Engineer not required to know condition of cattle guards.

*T. H. & I. Ry. Co. v. Williams, Admx.*, 172 Ill. 379 (69 Ill. App. 392, *affd.*).

**Absence of bumper at end of side track.** Car kicked down the track; ran off the end, striking child seven years old who was playing there. Leg amputated above knee. Judgment for plaintiff. Affirmed.

*C. St. L. & P. R. R. Co. v. Welsh*, 118 Ill. 572.

**Loose plank in railroad culvert**, passing locomotive struck and threw against plaintiff who stood near track. Judgment for plaintiff. Reversed because of the exclusion of evidence in rebuttal tending to contradict witnesses for plaintiff.

*Pennsylvania Co. v. Boylan*, 104 Ill. 595.

**Defective loading of car with iron rails projecting beyond the end of car.** Brakeman was injured in attempting to couple



this car with the caboose. Plaintiff had ample time to observe the danger from the iron rails. Hand crushed. Judgment for plaintiff. Reversed on ground plaintiff assumed the risk of an ordinary peril.

**T. W. & W. Ry. Co. v. Black, 83 Ill. 112.**

**Passenger on freight train injured.** Was riding on a ticket on the back of which was a contract that the passenger assumed all risk of accident. Waiving liability of railroad as carrier. Judgment for defendant. Affirmed on the ground that the contract was good.

**Arnold v. I. C. R. R. Co., 83 Ill. 273.**

**Boy nine years old injured while playing about a turn table—**not near public street and little used—left unlocked. Judgment for plaintiff. Reversed on ground that defendant's negligence not shown.

**St. L. V. & T. H. R. R. Co. v. Bell, 81 Ill. 76.**

**Passenger carried beyond station while asleep.** Got off on bridge in dark, fell through bridge to the ground thirty feet below. Judgment for plaintiff. Reversed for failure to show exercise of due care.

**I. C. R. R. Co. v. Green, 81 Ill. 19.**

**Child ten years old fell off car while attempting to get on—**thrown under the car—both legs crushed—amputated. After reaching his majority, plaintiff began action. Train was moving when plaintiff attempted to get on. Judgment \$6,000. Reversed on the ground that the injury was caused by plaintiff's negligence.

**O. & M. Ry. Co. v. Stratton, 78 Ill. 88.**

**Passing between cars of freight train—**plaintiff desiring to get to depot to take passenger train was compelled to pass through a freight train on track in front of depot. Train started while plaintiff was between cars throwing him down—foot severely injured. Default of plaintiff set aside. Judgment

**\$2,200.** Reversed because of defective declaration—no averment of the exercise of ordinary care. (See Ordinary Care.)

*C. & N. W. Ry. Co. v. Coss*, 73 Ill. 394.

**Train refused to stop for passenger and he walked to next station**—extremely cold day—could have procured horse and carriage—alleged sickness caused thereby. Judgment for plaintiff. Reversed, because of excessive damages.

*I. B. & W. Ry. Co. v. Birney*, 71 Ill. 391.

**Passenger carried by his station**—continued journey to next station and got off—brought suit against company for damage resulting. Judgment \$2.50. Affirmed.

*C. R. I. & P. Ry. Co. v. Fisher*, 66 Ill. 152.

**Colored woman not allowed to ride in ladies' car.** Forcibly removed to another car. Judgment \$200. Affirmed.

*C. & N. W. Ry. Co. v. Williams*, 55 Ill. 185.

**Foreman ordered inexperienced man to couple cars.** Work was not his regular service—he being common laborer. Was killed while attempting to make the coupling. Demurrer to Narr was sustained below on ground of fellow-servantship. Supreme court reversed, holding they were not fellow-servants.

*Lalor v. C. B. & Q. R. R. Co.*, 52 Ill. 401.

**Passenger's arm resting on window-sill—broken by passing train.** Plaintiff's elbow projected from car window, his hand hanging down inside. Something caught sleeve of coat and forcing arm against window-sill, broke it. Judgment \$2,500. Affirmed.

*C. & A. R. R. Co. v. Pondrom*, 51 Ill. 333.

**Child injured. Train collided with a push car left on side track.** A fragment from the collision struck child while standing in the street near. Judgment \$4,500. Affirmed.

*P. Ft. W. & C. Ry. Co. v. Bumstead*, 48 Ill. 221.

**Agreement of station agent that company will pay expenses.** Brakeman injured. Station agent agreed company would pay plaintiff for nursing him. Action is to collect for that service. Judgment for plaintiff. Affirmed.

T. W. & W. R. R. Co. v. Rodrigues, 47 Ill. 188.

**Passenger injured.** No facts stated. Judgment \$5,000. Affirmed.

I. C. R. R. Co. v. Simmons, 38 Ill. 242.

**Riding on free pass.** Passenger on car injured. Defendant pleaded release of liability on back of pass. Demurrer to plea sustained in circuit court. Full discussion of contract on free pass. Judgment \$4,000. Reversed because demurrer to plea of release of liability was sustained.

I. C. R. R. Co. v. Read, 37 Ill. 485 (24 Ill. 466, distinguished).

**Passing between cars of freight train.** Plaintiff attempted to cross between two cars to get to depot. Train started up and he was injured so that he died. Judgment \$5,000. Reversed on ground that plaintiff failed to use due care.

C. B. & Q. Ry. Co. v. Dewey, Admx, 26 Ill. 255.

**Wood piled on car knocked down by striking against car on side track as train passed.** Hit deceased and knocked him off the car. Deceased was laborer employed to assist in piling the wood on the cars. Rule as to fellow-servants. Judgment \$5,000. Reversed.

I. C. R. R. Co. v. Cox, 21 Ill. 20.

RECORD.

(See also APPEALS—ERRORS—ASSIGNMENT OF ERRORS.)

Exception to evidence must appear in.

C. G. W. Ry. Co. v. Mohan, 187 Ill. 281.

Error must be preserved in the abstract.

City Elec. Ry. Co. v. Jones, 161 Ill. 47.

Questions of law must be preserved in.

City Elec. Ry. Co. v. Jones, 161 Ill. 47.

Bill of exceptions need not show leave to sue as poor person.

C. & I. R. R. Co. v. Lane, 130 Ill. 117.

Bill of exceptions—what it should contain.

I. C. R. R. Co. v. Haskins, 115 Ill. 302.

Amendment of bill of exceptions in appellate court—practice, and what a sufficient showing that bill of exceptions contains all the evidence.

C. M. & St. P. Ry. Co. v. Walsh, 150 Ill. 608.

Objections for new trial—not part of the record.

Hanchett v. Haas, 219 Ill. 546.

Conduct of the judge—not part of record.

Hanchett v. Haas, 219 Ill. 546.

Abstract of—making—rules as to.

Christy v. Elliott, 216 Ill. 31.

Bill of exceptions—what showing must be made in to raise error in refusing evidence.

A. Ittner Brick Co. v. Ashby, Admr, 198 Ill. 562.

All the evidence should appear in narrative form when required. Brief and argument should not embody evidence but refer to it in abstract.

Streets Stable Car Line v. Bonander, 196 Ill. 15.

Exception to motion for new trial and to instruction must appear in bill of exceptions certified by trial judge.

C. B. & Q. R. R. Co. v. Haselwood, 194 Ill. 69.

Opinion of appellate court is not part of.

Martin, Admr, v. C. & N. W. Ry. Co., 194 Ill. 138.

Calumet Elec. Ry. Co. v. Van Pelt, 173 Ill. 70.

Continuance—the affidavits upon which same was asked must appear in.

City of Rock Island v. Starkey, 189 Ill. 515.

Instruction directing verdict—what is a sufficient setting forth of.

Landgraf v. Kuh, 188 Ill. 484.

Errors must appear in abstract of.

City Elec. Ry. Co. v. Jones, 161 Ill. 47.

Questions of law must be preserved in.

City Elec. Ry. Co. v. Jones, 161 Ill. 47.

Costs for—when taxed against appellee.

City of Elgin v. Nofs, 212 Ill. 20.

Should embody all the pleadings in the case.

Ill. Third Vein Coal Co. v. Cloni, 215 Ill. 583.

Rules for making up and requirements, contents, etc.

Christy v. Elliott, 216 Ill. 31.

Fetl v. C. C. Ry. Co., 211 Ill. 279.

Should be satisfactorily indexed—what evidence should be set out.

The Fair v. Hoffman, 209 Ill. 330.

Must contain all instructions given or refused—but it is sufficient if it purports to contain them.

Siegel, Cooper & Co. v. Norton, 209 Ill. 201.

C. B. & Q. R. R. Co. v. Haselwood, 194 Ill. 69.

Notice for new trial must be certified by trial judge, and must appear in bill of exceptions.

C. B. & Q. R. R. Co. v. Haselwood, 194 Ill. 69.

Exception to instruction and motion for new trial must appear in bill of exceptions.

C. B. & Q. R. R. Co. v. Haselwood, 194 Ill. 69.

St. L. A. & T. R. R. Co. v. Bauer, 156 Ill. 106.

Opinion of appellate court not part of.

C. E. Ry. Co. v. Van Pelt, Admx, 173 Ill. 70.

Martin, Admr, v. C. & N. W. Ry. Co., 194 Ill. 138.

O. & M. Ry. Co. v. Wangelin, 152 Ill. 138.

Instruction will be reviewed as appearing in bill of exceptions.

I. D. & W. Ry. Co. v. Hendrian, Admr, 190 Ill. 501.

What a sufficient setting forth of instruction directing jury to return verdict.

Landgraf, Admr, v Kuh, 188 Ill. 484.

(See Practice Act 1907.)

**RELEASE OF LIABILITY.**

Held a bar to recovery where no fraud shown.

C. U. T. Co. v. O'Connell, 224 Ill. 428.

Of no force when obtained by fraud—law.

Spring Valley Coal Co. v. Buzis, 213 Ill. 341.

Impeaching for fraud—rule as to what invalidates.

C. C. Ry. Co. v. Uhter, 212 Ill. 174.

Evidence showing release was obtained by fraud.

C. C. Ry. Co. v. Uhter, 212 Ill. 174.

As a condition in contract of employment held to bar recovery—when—porter on Pullman sleeping car.

C. R. I. & P. Ry. Co. v. Hamler, 215 Ill. 525.

Force of as evidence.

C. & A. R. R. Co. v. Jennings, 217 Ill. 494.

Proof of how release was obtained—all facts relating to, proper.

C. & A. R. R. Co. v. Jennings, 217 Ill. 494.

Condition in lease does not release landlord from liability for injury to one not a party to the lease.

Shoninger Co. v. Mann, 219 Ill. 242.

Where servant and master are jointly sued for the servant's negligence, and the servant is not found guilty—the master is released from liability.

Hayes v. Chicago Telephone Co., 218 Ill. 414.

Fraud in securing—evidence held sufficient to show.

I. D. & W. Ry. Co. v. Fowler, 201 Ill. 152.

How may be impeached for fraud.

C. C. Ry. Co. v. Uhter, 212 Ill. 174.

Whether obtained by fraud is for jury.

Hartley v. C. & A. R. R. Co., 197 Ill. 440.

When obtained without fraud is a bar to action—for what impeachable—what fraud cannot be shown—finding that release is valid is finding no fraud in its execution—when not attackable for fraud. Discussion of law as to releases.

Papke v. Hammond Co., 192 Ill. 631.

Obtained after suit commenced—how pleaded—puis darrein continuance.

Papke v. Hammond Co., 192 Ill. 631.

Signed by plaintiff who could not read or write English held void.

Pioneer Cooperage Co. v. Romanowicz, 186 Ill. 9.

Given by stock shipper in contract of shipment, releasing except for gross negligence, held void.

I. C. R. R. Co. v. Anderson, 184 Ill. 294.

Actual fraud in securing must be shown to avoid—question of fact for jury.

Pawnee Coal Co. v. Royce, 184 Ill. 402.

Signed while intoxicated, held not fraudulent unless intoxication was produced by or known to defendant.

Pawnee Coal Co. v. Royce, 184 Ill. 402.

Consideration received for—must be returned before recovery can be had.

Pawnee Coal Co. v. Royce, 184 Ill. 402.

By express messenger given to railroad company held good. Reason for excepting express messenger from general rule of public policy, stated.

Blank v. I. C. R. R. Co., 182 Ill. 332.

Written release by stock shipper to railroad company of liability is void as against public policy.

I. C. R. R. Co. v. Beebe, 174 Ill. 13.

When not binding on party signing.

Whitney & S. Co. v. O'Rourke, 172 Ill. 177.



Releasing one joint tort feisor does not release the other when.

W. C. St. Ry. Co. v. Piper, 165 Ill. 325.

Held invalid for want of knowledge by party signing.

National Syrup Co. v. Carlson, 155 Ill. 210.

Shown to have been fraudulently secured—when money advanced need not be returned.

C. R. I. & P. Ry. Co. v. Lewis, 109 Ill. 122.

Contract for given to railroad company when void.

W. St. L. & P. Ry. Co. v. Peyton, 106 Ill. 534.

Secured by physician attending injured person held void.

Eagle Packet Co. v. Defries, 94 Ill. 598.

Presumption is that it is valid.

C. W. D. Ry. Co. v. Mills, 91 Ill. 39.

Right of railroad company to limit its liabilities as a carrier, by contract—freight train.

Arnold v. I. C. R. R. Co., 83 Ill. 273.

Release of liability—for jury—duty to provide safe place—railroad company.

I. C. R. R. Co. v. Welch, 52 Ill. 183.

Release of liability—when good.

I. C. R. R. Co. v. Read, 37 Ill. 485.

Free railroad pass—railroad company may exempt itself for injury except as caused by gross negligence.

I. C. R. R. Co. v. Read, 37 Ill. 485.

**RELYING ON PERFORMANCE OF DUTY.**

Where the servant has knowledge of danger he cannot rely on the master's order to do the work in a certain way as releasing him from assuming the risk.

Republic Iron & S. Co. v. Lee, 227 Ill. 246.

- Servant may rely on master providing safe machine.

U. S. Wind E. & P. Co. v. Butcher, 223 Ill. 638.

Servant may rely on promise to repair and continue working at a machine known to be defective, for a reasonable time after such promise. What is a reasonable time for repairs is a question of fact. If the servant works more than a reasonable time he assumes the risk of injury from the defect or danger.

Odin Coal Co. v. Tadlock, 216 Ill. 624.

That street car company will use due care in running cars.

C. C. Ry. Co. v. Fennimore, 199 Ill. 9.

That master, by his foreman, will not order servant to work in dangerous place.

Ill. Steel Co., v. McFadden, 196 Ill. 344.

Chicago Edison Co. v. Moren, Admx, 185 Ill. 571.

Employee of railroad may assume switching yards are reasonably safe.

L. E. & W. R. R. Co. v. Morissey, 177 Ill. 376.

Servant may rely on assumption that premises are safe—without notice to contrary.

Whitney & S. Co. v. O'Rourke, 172 Ill. 177.

Hines Lumber Co. v. Ligas, 172 Ill. 315.

L. S. & M. S. Ry. Co. v. Conway, 169 Ill. 506.

Of master's promise to repair continues only reasonable time for repairs.

Ill. Steel Co. v. Mann, 170 Ill. 200.

600      RELYING ON PERFORMANCE OF DUTY.

That master will keep premises safe—ore pile fell—servant may.

Ill. Steel Co. v. Schymanowski, 162 Ill. 447.

That master has done his duty—how far servant may rely on.

C. & E. I. R. R. Co. v. Kneirim, 152 Ill. 438.

Western Stone Co. v. Whalen, 151 Ill. 473.

E. J. & E. Ry. Co. v. Hoadley, 222 Ill. 463.

Pullman Palace Car Co. v. Laack, 143 Ill. 243.

By flagman at crossing—public may.

C. R. I. & P. Ry. Co. v. Clough, 134 Ill. 586.

Servant may presume duty done.

C. & E. I. Ry. Co. v. Hines, 132 Ill. 162.

On performance of due diligence by railroad company at crossing—public may.

C. & A. R. R. Co. v. Adler, 129 Ill. 335.

That master will exercise due care in switching.

C. & N. W. Ry. Co. v. Goebel, 119 Ill. 516.

Servant may assume master has done his duty—incompetent servant.

U. S. Rolling Stock Co. v. Wfider, 116 Ill. 100.

Switchman may rely on compliance with speed ordinance in yards.

L. S. & M. S. Ry. Co. v. O'Conner, 115 Ill. 255.

Relying on safety of roadbed—servants may.

C. & N. W. Ry. Co. v. Swett, 45 Ill. 197.

**RES IPSA LOQUITUR.**

Does not apply between master and servant.

Diamond Glue Co. v. Wietzychowski, 227 Ill. 338.

Rule as to, discussed—servant injured.

I. C. R. R. Co. v. Swift, 213 Ill. 307.

Cases in which doctrine applies.

C. C. Ry. Co. v. Carroll, 206 Ill. 318.

C. C. Ry. Co. v. Barker, Admr., 209 Ill. 321.

C. & E. I. Ry. Co. v. Reilly, 212 Ill. 506.

C. U. T. Co. v. Newmiller, 215 Ill. 333.

Held not to apply where gas exploded in a beer tank owing to defective lamp, in control of plaintiff.

Schaller, Admr., v. Independent Brg. Co., 225 Ill. 492.

Applies where elevator fell injuring passenger.

Hartford Deposit Co. v. Sullott, 172 Ill. 222.

Shown—collision of street cars in tunnel—passenger injured.

N. C. St. Ry. Co. v. Cotton, 140 Ill. 487.

**RUN DOWN BY WAGON IN STREET**

**Child ran in front of horse.** Deceased, eight years old, ran in front of a horse, while attempting to cross street. Knocked down and killed. Judgment \$2,000. Reversed without remanding—no defendant's negligence shown.

*Toolen v. Chicago T. Supply Co.*, 222 Ill. 517 (10-06).

**"Playing tag" in street—struck by wagon.** Boy eleven years old, playing "tag" in street. Wagon ran over him. View unobstructed for eighty-five feet. Defendant claimed boy suddenly ran in front of wagon. Judgment \$4,500. Affirmed.

*Star Brewery Co. v. Houck, Admr.*, 222 Ill. 348 (10-06).

**Boy struck by wagon—high speed.** Boy struck by wagon driven at rapid speed. Driver claimed boy was trying to catch on and fell under wagon. Judgment \$3,775. Affirmed.

*United Breweries Co. v. O'Donnell, Admr.*, 221 Ill. 334 (4-06).

**Boy alighted from car—run down by buggy.** Boy fourteen years old, had just alighted from street car and was walking toward sidewalk, when horse driven by defendant ran into him. Judgment \$1,500. Affirmed.

*Hanchett v. Hass*, 219 Ill. 546 (2-06).

**Playing in street—boy struck by wagon.** Boy fourteen years old, run down by a brewery wagon and killed. Was playing in street. Driver talking to his son on driver's seat, did not look out ahead. View unobscured. Conflict as to speed. Judgment \$5,000. Affirmed.

*U. S. Brewing Co. v. Stoltenberg, Admr.*, 211 Ill. 531.

**Child run down by wagon—driver asleep.** Child two and one-half years old run over by defendant's wagon. Driver

nearly asleep. Did not look ahead. Leg crushed. Judgment for plaintiff. Affirmed.

Heldmaier v. Rehor, 188 Ill. 458 (12-00).

**Child run down by wagon.** Child, four years old, struck by wagon on public street. Judgment \$1,000. Affirmed.

Heldmaier v. Taman, 188 Ill. 283 (12-00).

**Boy run down by wagon.** Boy under fourteen years of age knocked down by wagon driven by defendant. Question of plea. Judgment for plaintiff. Reversed for refusal to allow amendment.

Ripley v. Leverenz, 183 Ill. 519 (2-00).

**Run down by ice wagon.** Iceman delivering ice neglected to tie his horses and they ran away, striking a lady in the street. Judgment \$5,000. Affirmed.

Washington Ice Co. v. Bradley, 171 Ill. 255 (70 Ill. App. 313, affd.)

**Child four years old run down by wagon.** Ordinance regulating speed. Judgment \$3,000. Affirmed.

Brink's Express Co. v. Kinnare, Admr., 168 Ill. 643.

**Child seven years old run down by wagon.** Driver of wagon not shown to be employe of defendant—was independent contractor delivering goods for defendant. Verdict directed. Affirmed.

Foster v. Wadsworth, 168 Ill. 514.

**Run down by wagon in street.** Small child. Permanent injury. Judgment \$1,140. Affirmed.

Schmidt v. Sinnott, 103 Ill. 160.

**Child run over by ox team.** Three years old—ran under feet of oxen as they were coming down a steep grade. Judgment for plaintiff. Reversed—no negligence of defendant shown.

City of Chester v. Porter, 47 Ill. 66.

## STATUTES.

Mine act—violation of not shown.

Kellyville Coal Co. v. Bruzas, 223 Ill. 595.

Establishing the appellate court and making it final as to the facts—held constitutional.

Toolen v. Chicago T. S. Co., 222 Ill. 517.

Violation of Mine Act—not providing automatic doors—shown.

Madison Coal Co. v. Hayes, 215 Ill. 625.

Violation of Child Labor Act of 1903—shown.

American Car and F. Co. v. Armentraut, 214 Ill. 509.

Statute of limitations—demurrer to properly sustained where one count not amenable to.

I. C. R. R. Co. v. Swift, 213 Ill. 307.

That minor misstated age or was guilty of contributory negligence is no defense to action, if the Child Labor Act has been violated.

American Car and F. Co. v. Armentraut, 214 Ill. 509.

Violation of Mine Act—insufficient brake.

Ill. Third Vein Coal Co. v. Cioni, 215 Ill. 583.

Wilful violation of Mine Act—what is.

Kellyville Coal Co. v. Strine, 217 Ill. 516.

Violation of Automobile Act of 1903—shown.

Christy v. Elliott, 216 Ill. 31.

Violation of Mine Act—failure to furnish props—shown.

Donk Bros. Coal Co. v. Stroff, 200 Ill. 483.

Violation of—failing to stop at crossing—held not shown.

C. & A. R. R. Co. v. Ralby, 203 Ill. 310.

Violation of Mine Act—what is.

Marquette Coal Co. v. Dielle, 208 Ill. 117.

Constitutionality of—how saved and how raised on appeal—exception to instruction.

Christy v. Elliott, 216 Ill. 31.

Of limitation—when does not apply.

Spring Valley Coal Co. v. Patting, 210 Ill. 342.

Appeal for construction of—should be to appellate court.

Sauter v. Anderson, 199 Ill. 319.

Section fourteen Practice Act construed.

Staunton Coal Co. v. Menk, Admx., 197 Ill. 369.

Section 57 Practice Act construed—motion for new trial (Does not apply to exceptions to instruction 36 Ill. App. 28, contra 57 Ill. App. 634).

I. C. R. R. Co. v. Johnson, Admx., 191 Ill. 594.

Violation of Mine Act—failure to furnish props.

Mt. Olive & Staunton Coal Co. v. Herbeck, 190 Ill. 39.

Mine Act—to what class of “workmen” it applies.

Mt. Olive & Staunton Coal Co. v. Herbeck, 190 Ill. 39.

Of limitations—does not bar an amendment stating same cause of action differently.

Chicago General Ry. Co. v. Carwell, Admx., 189 Ill. 273.

As to fire escapes—violation shown.

Landgraf, Admx., v. Kuh et al., 188 Ill. 484.

Violation of—negatives assumed risk.

Landgraf, Admx., v. Kuh et al., 188 Ill. 484.

Allowing plaintiff one year after involuntary non-suit to begin over—construed.

Boyce v. Snow, 187 Ill. 181.

Establishing mine inspectors appointed by the state held constitutional.

Consolidated Coal Co. v. People, 186 Ill. 134.

Of limitation—demurrer to properly sustained.

Ross et al. v. Shanley, 185 Ill. 390.



Of limitations—when sustaining demurrer to is reversible error.

C. C. Ry. Co. v. Leach, 182 Ill. 359.

Mine Act—requiring props to be supplied does not supersede common law as to due diligence by master.

Consolidated Coal Co. v. Bokamp, 181 Ill. 9.

Paragraph 24 of limitations construed—allowing an additional year to begin over in case of involuntary non-suit—not applied to voluntary non-suit—and cause must be the same.

Gobbs v. Crane El. Co., 180 Ill. 191.

Requiring bell and whistle at crossing applies to street crossing and not where bridge crosses track.

C. C. C. & St. L. Ry. Co. v. Halbert, 179 Ill. 196.

Of Indiana abrogating fellow-servant rule will be enforced in Illinois where the injury occurred in Indiana.

C. & E. I. Ry. Co. v. Rouse, 178 Ill. 132.

Of limitation—when demurrer to is good.

C. & N. W. Ry. Co. v. Gillison, 173 Ill. 264.

Cattle guards—Act requiring construed.

T. H. & I. Ry. Co. v. Williams, 172 Ill. 379.

Of limitation—plea of sustained.

I. C. R. R. Co. v. Campbell, 170 Ill. 163.

Chapter 70, sections one and two—construed—speed of trains—scope of.

E. St. L. C. Ry. Co. v. Eggman, 170 Ill. 538.

I. C. R. R. Co. v. Crawford, 169 Ill. 554.

Practice Act, section 50—construed—disregarding faulty count.

Consolidated Coal Co. v. Scheiber, 167 Ill. 539.

Of limitations—question as to is for court.

C. St. P. K. C. Ry. Co. v. Ryan, 165 Ill. 89.

Of limitations—when action is barred by.

Eylenfeldt v. Ill. Steel Co., 165 Ill. 185.

Restricting supreme court to questions of law—held constitutional.

*I. C. R. R. Co. v. Larson*, 152 Ill. 326.

As to cattle guards—violation shown.

*A. T. & S. F. Ry. Co. v. Elder*, 149 Ill. 173.

When re-enactment will be presumed.

*Catlett v. Young*, 143 Ill. 74.

Section 89 of Practice Act making appellate court final as to facts—constitutional.

*C. & A. R. R. Co. v. Fisher*, 141 Ill. 615.

Re-enactment—construction of.

*Fitzpatrick v. C. & W. I. R. R. Co.*, 139 Ill. 248.

Subsequent to city charter controls as to signals at crossings.

*I. C. R. R. Co. v. Slater*, 129 Ill. 91.

As to special interrogatories merely declares the common law.

*C. & N. W. Ry. Co. v. Dunleavy*, 129 Ill. 135.

Of limitations properly overruled if one count good.

*Pennsylvania Co. v. Sloan*, 125 Ill. 72.

As to ringing bell at crossing merely states the common law.

*C. & A. R. R. Co. v. Dillon*, 123 Ill. 571.

Need not be pleaded—judicial notice of.

*C. & A. R. R. Co. v. Dillon*, 123 Ill. 571.

Mine Act—provision as to safe cage brake construed.

*Beard v. Skeldon*, 113 Ill. 584.

When violation does not excuse contributory negligence.

*W. St. L. & P. Ry. Co. v. Wallace*, 110 Ill. 114.

Not repealed by implication.

*Holton v. Daly, Admx.*, 106 Ill. 131.

Section 54 Railroad and Warehouse law does not apply to person injured crawling under car at crossing.

*C. B. & Q. R. R. Co. v. Sykes*, 96 Ill. 162.

Allowing new action within one year after non-suit—construed.

Holmes v. C. & A. R. R. Co., 94 Ill. 439.

Dram Shop Act of 1874 did not change Act of 1872.

Reed v. Thompson, 88 Ill. 245.

Widow has action for violation of mine act.

Litchfield Coal Co. v. Taylor, 81 Ill. 590.

The Statute of 1874 entitled "injuries" does not repeal section 14 of Mine Act.

Litchfield Coal Co. v. Taylor, 81 Ill. 590.

The revision of the law of 1874 did not take away right of action under law of 1872.

Roth v. Eppy, 80 Ill. 283.

Dram shop act of 1872 should be strictly construed.

Freese v. Tripp, 70 Ill. 496.

Act of 1853 relative to dogs—when declaration is not within.

Wormley v. Gregg, 65 Ill. 251.

The Act of 1849 requiring bell to be rung at railroad crossings applies to all railroads not specially exempted by their charters.

W. U. Ry. Co. v. Fulton, 64 Ill. 271.

Discussion of act as to ringing bell and blowing whistle at railroad crossings—not negligence per se.

G. & C. U. Ry. Co. v. Dill, 22 Ill. 265.

**SAFE PLACE TO WORK—DUTY TO FURNISH.**

**Scaffolding held unsafe.**

Schillinger Bros. Co. v. Smith, 225 Ill. 74.

**Declaration averring failure to provide held good on demurrer.**

Grace v. Hyde Co. v. Strong, 224 Ill. 630.

**Not where the conditions of the work are changing from day to day.**

Momence Stone Co. v. Turrell, 205 Ill. 515.

**Failure of master to provide—shown.**

Armour v. Galkowska, 202 Ill. 144.

Missouri Mall. Iron Co. v. Dillon, 206 Ill. 145.

Momence Stone Co. v. Turrell, 205 Ill. 515.

Barnett & Record Co. v. Schlapka, 208 Ill. 426.

Henrietta Coal Co. v. Campbell, 211 Ill. 216.

Muren Coal & Ice Co. v. Howell, 217 Ill. 190.

McCormick H. Machine Co. v. Zakzewski, 220 Ill. 522

Nelson, Morris & Co. v. Malone, Admx., 200 Ill. 132.

**Duty to provide is a positive obligation of the master—cannot be delegated.**

Himrod Coal Co. v. Clark, 197 Ill. 514.

**Due diligence of master in providing—rule as to.**

Western Stone Co. v. Muscial, 196 Ill. 382.

**Failure to provide shown—scaffolding fell killing stone setter.**

McBeath v. Rawle, Admx., 192 Ill. 626.

**Failure to provide—red hot rivet dropped striking workman—no protection.**

Pioneer Fireproof Con. Co. v. Howell, 189 Ill. 123.

**Failure to provide shown—mine wall fell on miner.**

Consolidated Coal Co. v. Gruber, 188 Ill. 584.

Failure to provide sufficient light to work by—shown.

Swift & Co. v. O'Neill, 187 Ill. 337.

Rule as to providing does not apply where a servant is making repairs on a dangerous roof in a mine.

Kellyville Coal Co. v. Bruzas, 223 Ill. 595.

Duty of master to provide is personal to the master.

Schillinger Bros. Co. v. Smith, 225 Ill. 74.

Duty of master to provide—liable unless dangers are incident to work or servant has equal means of knowing of.

N. C. St. Ry. Co. v. Dudgeon, 184 Ill. 477.

Failure to provide where railroad company leaves unballasted tracks in switching yards.

L. E. & W. Ry. Co. v. Morrissey, 177 Ill. 376.

Duty of master to provide cannot be delegated.

C. & A. R. R. Co. v. Scanlan, 170 Ill. 106.

C. & A. R. R. Co. v. Maroney, 170 Ill. 521.

A scaffolding held to be a "place" or "appliance" within the rule.

C. & A. R. R. Co. v. Maroney, 170 Ill. 521.

Servant may assume premises safe.

C. & A. R. R. Co. v. Maroney, 170 Ill. 521.

L. S. & M. S. Ry. Co. v. Conway, 169 Ill. 505.

Duty to provide shown—ore pile—piece of ore fell striking workman.

Ill. Steel Co. v. Schymanowski, 162 Ill. 447.

Duty to provide cannot be delegated.

Norton v. Volzke, 158 Ill. 403.

Libby, McNeill & Libby v. Scherman, 146 Ill. 541.

Duty of master to provide need not be averred in pleadings.

Cribben v. Callaghan, 156 Ill. 549.

Failure to provide shown—employee fell down elevator shaft.

National Syrup Co. v. Carlson, 155 Ill. 210

Bridge built too low—brakeman struck.

C. & A. R. R. Co. v. Johnson, 116 Ill. 206.

Master is not an insurer of safety—must use due diligence to provide safe place.

I. B. & W. Ry. Co. v. Toy, 91 Ill. 474.

Rule as to providing.

Pennsylvania Co. v. Lynch, 90 Ill. 333.

Of master to provide safe ladder on car.

C. & A. R. R. Co. v. Platt, 89 Ill. 141.

Duty of master to provide.

Richardson v. Cooper, 88 Ill. 270.

**SCAFFOLDING ACCIDENTS.**

**Scaffolding fell owing to weak supports.** Bricklayer injured by fall of scaffold provided for him to work on. Plaintiff was late and had just got on to scaffold when it fell. He could have seen what was on the scaffold if he observed it. Could have seen the supports were weak if he had noticed them. Duty of master to furnish safe place. Judgment for plaintiff. Affirmed.

Schillinger Bros. Co. v. Smith, 225 Ill. 74; (12-06).

**Defective scaffolding fell.** Scaffolding which several men were removing fell injuring plaintiff who was assisting. Not help enough. Judgment for plaintiff; reversed without remanding because declaration did not state a cause of action and was not amendable after two years.

Klawiter v. Jones & Ill. Steel Co., 219 Ill. 627 (2-06).

**Defective scaffolding fell—servant helped build it.** Defendant employed plaintiff on a ten story building in which were erected wooden scaffolds. Foreman ordered plaintiff to go on one of the scaffolds. Stringer broke throwing plaintiff to floor below. Plaintiff assisted in erecting the scaffold. Judgment for plaintiff. Reversed because of defective instruction on assumed risk.

Ill. Terra Cotta L. Co. v. Hanley, 214 Ill. 243.

**Scaffolding fell throwing carpenter to ground.** Plaintiff employed by defendant to work as a carpenter at a race track. Scaffolding on which he worked fell throwing him to the ground. Judgment \$2,000. Affirmed.

Condon v. Schoenfeld, 214 Ill. 226 (2-05).

**Defective scaffolding—servant asked master to repair it—fell.** Sign painter for defendant worked on a scaffold. Scaffold weak. Asked foreman to fix it. Foreman said he would.

Did not and later scaffold fell injuring plaintiff. Question—how long servant may continue on promise of repairs. Judgment \$10,000. Reversed and remanded.

*The Gunning System v. La Pointe*, 212 Ill. 274 (12-04).

**Defective scaffolding fell—painter injured.** Painter employed by defendant was ordered to get a scaffolding, place it, and paint a certain building. Plaintiff and another workman got upon the scaffolding when it gave way, throwing them to the ground. Defective stringer cause of fall. Could have been seen by inspection but not by casual observation. Judgment \$2,500. Affirmed.

*Ehlen v. O'Donnell*, Admr., 205 Ill. 38 (10-03).

**Defective platform fell upon workman underneath.** Plaintiff was a carpenter working on a building being erected for defendant. Worked under direction of defendant's foreman. A platform fell striking plaintiff who was under it. He asked foreman to move him from under scaffold but foreman told him to continue working there. Held fellow-servantship not shown. Judgment for plaintiff. Affirmed in appellate and supreme.

*Frost Mfg. Co. v. Smith*, 197 Ill. 253 (6-02).

**Scaffolding fell—rope loosened by mistake by fellow-servant.** Plaintiff was employed painting one of the World's Fair Buildings, using scaffolding suspended by ropes. There were a number of gangs each having a separate scaffold, three men to each. By mistake a member of another gang, loosened the ropes of plaintiff's scaffold causing it to fall, throwing plaintiff to the ground. Judgment \$2,000. Reversed and remanded. Reversed on ground—fellow-servants—discussion of fellow-servantship.

*World's Columbian Exposition v. Lehigh*, 196 Ill. 612 (4-02).

**Defective scaffold fell—stone setter killed.** Stone setter working on a building being erected by defendants. Scaffold on which he worked fell owing to defect, killing deceased. Defendants had not constructed scaffold. Held their duty to see



it was safe, though built by others. Judgment \$5,000. Affirmed.

McBeath et al. v. Rawle, Admx., 192 Ill. 626 (10-01).

**Defective scaffold—fell while taking down—complaint of danger.** Scaffold used by defendant in the erection of a grain elevator was ordered removed by deceased and others. It fell while being taken down. Deceased had complained to foreman of danger, who ordered him to go ahead. Judgment \$5,000. Affirmed.

Graver Tank Works v. O'Donnell, Admr., 191 Ill. 236 (6-01).

**Defective plank in scaffolding—built by plaintiff and others.** White-washer employed by defendant on building. He and others built a scaffold from planks pointed out to them by foreman, who approved erection of same. A plank broke because defective. Leg broken. Judgment \$2,000. Affirmed in appellate—reversed and remanded in supreme court. No duty of defendant to plaintiff shown.

Armour v. Brazean, 191 Ill. 117 (6-01).

**Hanging scaffold fell—rope slipped.** Workman thrown to ground. He had objected to method of fastening rope but foreman had ordered it so fastened. Judgment for defendant. Reversed in supreme court and remanded.

Offutt v. Columbian Exposition, 175 Ill. 472.

**Defective board in scaffolding broke throwing employe to the ground.** Plaintiff stood on the scaffold to take lumber from a pile and pass it to another employe. Another servant made the scaffold. Judgment for plaintiff. Affirmed.

Hines Lumber Co. v. Ligas, 172 Ill. 315.

**Scaffolding fell—improper construction—same facts as 170 Ill. 106.** Judgment \$2,500. Affirmed. 1. Scaffolding is a "place" or "appliance."

C. & A. R. R. Co. v. Maroney, 170 Ill. 521 (12-97).

**Improperly constructed scaffolding fell injuring mason.** The scaffolding had been built by the carpenters for the use of the masons on a round house being built for the defendant company. Judgment for plaintiff. Affirmed.

C. & A. R. R. Co. v. Scanlan, 170 Ill. 106 (67 Ill. App. 621, *affd.*).

**Defective scaffolding fell throwing carpenter to ground.** Permanent injury and disability (leading case on what plaintiff must prove). Judgment \$7,500. Affirmed.

Goldie v. Werner, 151 Ill. 552.

**SPECIAL INTERROGATORIES.**

When properly refused.

C. C. Ry. Co. v. Foster, 226 Ill. 288.

Entering judgment on special findings. When inconsistent with general verdict.

Sargent Co. v. Baublis, 215 Ill. 428.

Must be submitted to opposing counsel—reversible error not to.

P. C. C. & St. L. R. R. Co. v. Smith, 207 Ill. 486.

C. C. Ry. Co. v. Jordan, Admr., 215 Ill. 390.

May be discussed in argument to the jury or before the court.

C. C. Ry. Co. v. Jordan, Admx., 215 Ill. 390.

C. & A. R. R. Co. v. Gore, 202 Ill. 188.

What is proper form of—must call for ultimate not evidentiary facts.

Ill. C. R. R. Co. v. Sheffner, 209 Ill. 9.

Ill. Steel Co. v. Mann, 197 Ill. 186.

Findings—rule as to.

Henrietta Coal Co. v. Campbell, 211 Ill. 216

Must be given if requested—when.

P. C. C. & St. L. R. R. Co. v. Smith, 207 Ill. 486.

Properly refused when calling for merely evidentiary facts.

Ill. Steel Co. v. Mann, 197 Ill. 186.

City of Beardstown v. Clark, 204 Ill. 524.

How properly submitted to the jury.

C. & E. I. R. R. Co. v. Rains, 203 Ill. 417.

Proper refused when not calling for facts inconsistent with general verdict.

Chicago Exchange Bldg. Co. v. Nelson, 197 Ill. 334.

May be submitted by the court of his own motion after refusing those submitted.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9.

Must control a general verdict—form of disapproved.

C. & A. R. R. Co. v. Harrington, 192 Ill. 9.

Must ask for ultimate not merely evidentiary facts.

Gundlach v. Schott, 192 Ill. 509.

C. C. Ry. Co. v. Ollis, Admx., 192 Ill. 514.

C. & A. Ry. Co. v. Winters, 175 Ill. 294.

What is an ultimate fact as required in construed.

C. C. Ry. Co. v. Ollis, Admx., 192 Ill. 514.

Calling for evidentiary facts—properly refused.

Graver Tank Works v. O'Donnell, 191 Ill. 236.

Set out in full.

Union Bridge Co. v. Teehan, 190 Ill. 374.

Properly refused when calling for evidentiary facts.

Boyce v. Snow, 187 Ill. 181.

Court may substitute one of its own—change—held proper.

C. & A. R. R. Co. v. Pearson, 184 Ill. 386.

When findings are not inconsistent with general verdict for plaintiff.

E. St. L. C. Ry. Co. v. Reames, 173 Ill. 582.

Properly refused when asking if specified acts constitute contributory negligence.

C. C. Ry. Co. v. Taylor, 170 Ill. 49.

Should ask for ultimate and not evidentiary facts.

T. H. & I. R. R. Co. v. Eggman, 159 Ill. 551.

St. L. A. & T. H. R. R. Co. v. Eggman, 161 Ill. 155.

Brinks Express Co. v. Kinnare, 168 Ill. 643.

C. & A. R. R. Co. v. Anderson, 166 Ill. 572.

Elgin City Ry. Co. v. Salisbury, 162 Ill. 187.

T. H. & I. Ry. Co. v. Voelker, 129 Ill. 541.

Held properly modified by court.

W. C. St. Ry. Co. v. McNulty, 166 Ill. 203.

When verdict is or is not controlled by answers to—must be inconsistent with.

Taylor v. Felsing, 164 Ill. 331.

Ebsery v. C. C. Ry. Co., 164 Ill. 518.

No presumptions favor answers to.

Ebsery v. C. C. Ry. Co., 164 Ill. 518.

Act of 1887 as to—construed.

Elgin City Ry. Co. v. Salisbury, 162 Ill. 187.

May be given by the court of its own motion.

Norton v. Volzke, 158 Ill. 403.

Objections to findings—how saved.

Pennsylvania Coal Co. v. Kelly, 156 Ill. 9.

When judgment should be entered on findings.

Wabash R. R. Co. v. Speer, 156 Ill. 244.

When it is not error to refuse.

Norton v. Volzke, 158 Ill. 403.

Effect where jury fails to answer fully.

Wabash R. R. Co. v. Speer, 156 Ill. 244.

What the essential requisites of.

L. Wolff Mfg. Co. v. Wilson, 152 Ill. 9.

Are properly refused when asking for evidentiary facts.

Western Stone Co. v. Whalen, 151 Ill. 473.

L. E. & W. Ry. Co. v. Morain, 140 Ill. 118.

Answers to cannot be questioned on appeal.

City of Aurora v. Rockabrand, 149 Ill. 399.

“We do not know” is not an answer to.

E. J. & E. Ry. Co. v. Raymond, 148 Ill. 242.

Properly refused when answer to would not be inconsistent with general verdict.

Chicago Pressed Brick Co. v. Reinneiger, 140 Ill. 334.

May cure refusal of instruction.

City of Flora v. Naney, 136 Ill. 45.

Must ask for answers that would control a general verdict—when immaterial.

J. S. & E. Ry. Co. v. Southworth, 135 Ill. 250.

What is a sufficient answer.

L. S. & M. S. Ry. Co. v. Johnson, 135 Ill. 641.

Must be submitted to counsel before commencement of argument.

McMahon v. Sankey, 133 Ill. 637.

When not inconsistent with general verdict.

Quick v. I. & St. L. Ry. Co., 130 Ill. 334.

C. & N. W. Ry. Co. v. Snyder, 128 Ill. 655.

Must conform to case made by the pleadings.

Consolidated Coal Co. v. Maehl, 130 Ill. 551.

Statute as to merely declaratory of common law.

C. & N. W. Ry. Co. v. Dunleavy, 129 Ill. 135.

Rule as to—and force of.

C. & N. W. Ry. Co. v. Dunleavy, 129 Ill. 135.

Special finding will control where verdict is inconsistent with it.

Paxton v. Boyer, 67 Ill. 132.

General verdict not set aside because inconsistent with some special finding if consistent with findings considered together.

C. & A. R. R. Co. v. Murray, 71 Ill. 601.

Special interrogatory—is it error to tell jury that if they can not answer a question they need not do so.

C. B. & Q. Ry. Co. v. Van Patten, 74 Ill. 91.

Special interrogatory—where finding is inconsistent with verdict, special finding will control.

St. L. & S. E. Ry. Co. v. Britz, 72 Ill. 256.

**STREET RAILWAY ACCIDENTS.**

**ALIGHTING FROM CAR, p. 620.**  
**BOARDING CAR, p. 624.**  
**COLLISION WITH LOCOMOTIVE, p. 627.**  
**COLLISION CAR WITH CAR, p. 627.**  
**COLLISION WITH VEHICLES, p. 628.**  
**EJECTED FROM CAR, p. 636.**  
**FELL OR JERKED OFF CAR, p. 637.**  
**MISCELLANEOUS, p. 638.**  
**PASSENGER RIDING ON STEP, ETC., p. 643.**  
**PEDESTRIAN RUN DOWN BY CAR, p. 643.**  
**TROWN DOWN WHILE IN CAR, p. 647.**

**a. Injured Alighting From.**

**Alighting from street car—started suddenly throwing lady passenger to the ground. Traumatic neurosis; required crutches permanently. Judgment \$9,000. Affirmed.**

**C. C. Ry. Co. v. Foster, 226 Ill. 288.**

**Alighting from car—suddenly started. Passenger thrown to ground as she was getting off, by sudden starting of car. Judgment \$1,500. Affirmed.**

**C. U. T. Co. v. Yarus, 221 Ill. 641 (6-06).**

**Alighting from car—suddenly started. Plaintiff, a woman, thrown to ground by sudden jerk of car as she was alighting. Conflict as to whether car had stopped. Judgment \$1,250. Reversed and remanded in supreme court for conduct of attorney in repeatedly asking question ruled out, in order to influence the jury.**

**C. C. Ry. Co. v. Gregory, 221 Ill. 591 (6-06).**

**Alighting from car—suddenly started. Passenger alighting from car thrown down by car suddenly starting. Judgment \$5,000. Affirmed.**

**West Chicago St. Ry. Co. v. Annie McCafferty, 220 Ill. 476 (2-06).**

**Alighting from car—suddenly started.** Passenger thrown from car while alighting. Car started up suddenly. Judgment \$6,000. Affirmed.

*C. & J. Electric Ry. Co. v. Patton*, 219 Ill. 215 (12-05).

**Alighting from car—suddenly started.** Passenger about to alight thrown off by car suddenly starting. Judgment for plaintiff. Affirmed.

*C. C. Ry. Co. v. Lowitz*, 218 Ill. 26.

**Alighting from car—suddenly started.** Passenger standing on foot board. Car stopped. He got off (one foot on foot board) and reached to take his daughter off. Car started, throwing him to ground. Quare—was he a passenger. Judgment \$2,500. Affirmed.

*C. U. T. Co. v. Rosenthal*, 217 Ill. 458 (10-05).

**Alighting from car.** Passenger injured while alighting from car. Judgment for plaintiff. Affirmed.

*The Central Ry. Co. v. Aukiewicz*, 213 Ill. 631.

**Alighting from car—suddenly started—tuberculosis.** Passenger thrown to ground while alighting from car. Car started suddenly. Sixty years of age. Tuberculosis developed in arm. Judgment \$10,000. Affirmed.

*C. C. Ry. Co. v. Saxby*, 213 Ill. 274 (12-04).

**Alighting from car—suddenly started.** Passenger alighting thrown to ground by sudden starting of the car. Judgment \$1,500. Affirmed.

*C. U. T. Co. v. Hawthorn*, 211 Ill. 367 (10-04).

**Alighting from car.** Passenger thrown to ground while attempting to alight. Judgment \$7,500. Affirmed.

*C. U. T. Co. v. Olsen*, 211 Ill. 255 (10-04).

**Alighting from car—sudden jerk.** Passenger alighting from car thrown down by car suddenly starting. Judgment \$5,000. Affirmed.

*C. C. Ry. Co. v. Bundy*, 210 Ill. 39 (6-04).



**Alighting from car—suddenly started.** Passenger alighting from car thrown down by sudden starting of car. Conflict as to alighting. Judgment \$5,000. Affirmed.

N. C. St. Ry. Co. v. Wellner, 206 Ill. 272 (12-03).

**Getting off elevated car—suddenly started.** Passenger on elevated getting off at platform. Car started up throwing her down. Judgment \$5,000. Affirmed.

Lake St. "L" Ry. Co. v. Shaw, 203 Ill. 39 (4-03).

**Alighting from car—suddenly started.** Girl twelve years old, was passenger on car. Thrown to ground by sudden starting of car as she was getting off. Settlement for \$50, set aside by suit in equity. On trial judgment for defendant, reversed by appellate court. Judgment for plaintiff. Affirmed.

W. C. St. Ry. Co. v. Lieserowitz, 197 Ill. 607 (6-02).

**Alighting from car—suddenly started.** Passenger thrown from car by sudden starting as she was alighting. Judgment \$4,500. Affirmed.

So. Chicago C. Ry. Co. v. McDonald, 196 Ill. 203 (4-02).

**Alighting from car—suddenly started.** Passenger thrown to ground by sudden starting of car as he was getting off. Judgment \$3,500. Affirmed.

Joliet Railway Co. v. McPherson, 193 Ill. 629 (12-01).

**Alighting from car—suddenly started.** Passenger thrown from car while alighting, by sudden jerk. Judgment \$3,000. Affirmed.

C. & P. St. Ry. Co. v. Brown, 193 Ill. 274 (12-01).

**Alighting from street car.** Passenger alighting from street car fell—hip bone fractured—started suddenly. Judgment for plaintiff. Affirmed.

N. C. St. Ry. Co. v. Fitzgibbons, 180 Ill. 466 (6-99).

**Alighting from street car.** Passenger alighting—car suddenly started. Hip broken. 1. Going onto platform before car stops not negligence. Judgment \$5,000. Affirmed.

N. C. St. Ry. Co. v. Brown, 178 Ill. 187 (2-99).

**Alighting from street car.** Lady was on foot board waiting for car to stop. It had slowed down. A sudden jerk threw her off. Judgment for plaintiff. Affirmed. Getting on or off moving car not contributory negligence per se.

Springfield Ry. Co. v. Hoeffner, 175 Ill. 634.

**Lady alighting from street car was thrown down by the sudden start of the car.** The injury caused a miscarriage and left her in bad nervous condition. Judgment \$2,000. Affirmed.

N. C. St. R. R. Co. v. Shreve, 171 Ill. 438 (70 Ill. Appt. 666, *affd*).

**Alighting from street car—sudden jerk.** Judgment for plaintiff. Affirmed. 1. Payment of fare not necessary to passenger-ship. 2. Ordinances as to stopping cars. 3. Stopping at near crossing. 4. Care required in alighting from car. 5. Instruction as to alighting—properly refused.

W. C. St. Ry. Co. v. Manning, 170 Ill. 418 (12-97).

**Alighting from street car.** Boy eight years old attempted to get off wrong side after car started. Struck by car from opposite direction. Car did not stop long enough. Judgment \$3,000. Affirmed.

W. C. St. Ry. Co. v. Waniatta, Admx., 169 Ill. 17.

**Alighting from car—started suddenly.** Injury to spine. Lady. Judgment \$3,000. Affirmed.

N. C. St. Ry. Co. v. Gillow, 166 Ill. 444.

**Alighting from street car—sudden jerk.** Judgment \$3,000. Affirmed.

N. C. St. Ry. Co. v. Southwick, 165 Ill. 494.

**Alighting from one car going east struck by car of another company going south.** Crushed between cars. Action against both companies. Judgment (joint) \$2,000. Affirmed.

W. C. St. Ry. Co. v. Cahill, 165 Ill. 496.

**Getting off street car—sudden jerk.** Judgment \$1,000. Affirmed.

C. C. Ry. Co. v. Dinsmore, 162 Ill. 658.

**Alighting from street car.** Clothes caught in defect in car, throwing plaintiff to ground. Judgment \$10,000. Affirmed.

N. C. St. Ry. Co. v. Eldridge, 151 Ill. 543.

**Alighting from street car.** Boy ten years old asked conductor to stop. He did not, and boy jumped—fell under car—was killed. Action by next of kin. Judgment \$2,500. Affirmed.

N. C. St. Ry. Co. v. Wrixon, Admr., 150 Ill. 532.

**Alighting from street car—suddenly started.** Passenger thrown to ground. Thigh-bone broken. Judgment for plaintiff. Affirmed.

C. W. D. Ry. Co. v. Mills, 105 Ill. 6

**Getting off street car.** Suddenly started, throwing passenger to ground. Thigh-bone fractured. Cripple for life. Judgment \$5,000. Affirmed.

C. C. Ry. Co. v. Mumford, 97 Ill. 560.

**Alighting from street car.** Suddenly started—lady thrown to ground. Judgment \$7,000. Reversed because of general instruction for plaintiff assuming facts and instruction placing burden of proof to show release good on defendant.

C. W. D. Ry. Co. v. Mills, 91 Ill. 39.

#### **b. Injured Boarding Car.**

**Boarding street car—suddenly started.** Plaintiff was boarding street car. Had put daughter and baby on and had one foot on foot-board when car started. Conflict as to his intent to become a passenger. Judgment \$5,000. Affirmed.

C. U. T. Co. v. Lowenrosen, 222 Ill. 506 (10-06).

**Boarding car—suddenly started—spine injured.** Plaintiff was trying to board street car. Car started up throwing her to the ground. Injury to spine and internally. Judgment \$15,000. Affirmed.

C. U. T. Co. v. May, 221 Ill. 530 (4-06).

**Boarding slowed up car—sudden jerk.** Boy of fourteen years attempted to get on car that had slowed up for him in middle of block. Sudden jerk of the car threw him to the ground. Judgment \$10,000. Affirmed in appellate; reversed and remanded in supreme for erroneous instruction on credibility.

C. U. T. Co. v. O'Brien, Jr., 219 Ill. 303 (12-05).

**Boarding car—suddenly started.** Plaintiff was attempting to board car at crossing. Started suddenly throwing him to the ground. Judgment \$2,500. Affirmed in appellate; reversed and remanded because of evidence as to cost of operation not yet performed.

C. C. Ry. Co. v. Henry, 218 Ill. 93 (10-05).

**Boarding car—slowed down—sudden jerk.** Boy attempting to board car, which had slowed down for him, thrown down by sudden jerk after he had hold of hand rail. Judgment for plaintiff. Affirmed.

C. U. T. Co. v. Lundahl, Admr., 215 Ill. 289 (4-03).

**Passenger on elevated fell between cars—no guard.** Passenger stood on elevated platform. As train came along and stopped she started for the car entrance, as she thought, but instead stepped between the cars, there being no guard. The night dark, and no lights on the platform. Fell to rails four feet below. Judgment \$2,500. Affirmed.

Lake St. "L" Ry. Co. v. Burgess, 200 Ill. 628 (3-03).

**Boarding car—suddenly started—conductor.** Plaintiff was conductor for defendant. Defendant was repairing its tracks. Piles of stone were left on sides of track. Plaintiff was attempting to board a car of which he was conductor. Car

started suddenly throwing him down against stone pile and under car. Assumed risk not shown. Judgment \$12,000. Affirmed.

N. C. St. R. R. Co. v. Dudgeon, 184 Ill. 477 (2-00).

**Attempting to get on street car—suddenly started.** Judgment \$7,500. Affirmed.

N. C. St. Ry. Co. v. Anderson, 176 Ill. 635.

**Getting on car. Suddenly started.** Collar-bone broken. Judgment \$2,000. Affirmed.

C. C. Ry. Co. v. Allen, 169 Ill. 287.

**Boarding street car—started suddenly.** One leg rendered useless. Judgment \$3,750. Affirmed.

N. C. St. Ry. Co. v. Leonard, 167 Ill. 618.

**Getting on moving street car. Started suddenly.** Judgment \$2,500. Affirmed.

N. C. St. Ry. Co. v. Wiswell, 168 Ill. 613.

**Getting on moving street car. Knocked off by wagon.** Run over by grip car. Gripman did not see plaintiff. Judgment for defendant on special findings. Affirmed.

Ebsery v. C. C. Ry. Co., 164 Ill. 518.

**Boarding moving street car—sudden jerk.** Left hand cut off. Cabinet maker. Judgment \$8,000. Affirmed.

Cicero St. Ry. Co. v. Meixner, 160 Ill. 320.

**Boarding street car.** Passenger thrown to ground by sudden starting of car. Seventy-eight years of age—partial paralytic. Had hold of hand-rail. Arm broken, etc. Conductor in front end of car collecting fares. Judgment \$1,625. Affirmed.

N. C. St. Ry. Co. v. Cook, 145 Ill. 551.

**Plaintiff got on moving street car. Asked conductor to stop.** On his refusal she attempted to alight while car was in motion. Three trials. Judgment \$1,500. Affirmed.

C. C. Ry. Co. v. McMahon, 103 Ill. 485.

**c. Collision With Locomotive.**

**Collision—car and locomotive.** Passenger on car injured by car being run onto railroad crossing on dark day. Struck by locomotive. Judgment for plaintiff. Affirmed.

*C. C. Ry. Co. v. Shaw*, 220 Ill. 532 (2-06).

**Freight train backed upon street car—passenger injured.** Girl, sixteen years old, was passenger on street car. Car stopped at railroad crossing while freight train passed. Gates were then raised. Car went onto track, when freight train backed up without warning, hitting car. Judgment \$5,000. Affirmed.

*C. & A. R. R. Co. v. McDonnell*, 194 Ill. 82 (12-01).

**Collision—car ran through railroad gates.** Trolley car ran through gates at railroad crossing. Gates down; conductor and motorman drunk. Locomotive struck car. Passenger injured. Joint liability of railroad and defendant. Judgment \$10,000. Affirmed.

*C. & E. I. R. R. Co. v. Mochell*, 193 Ill. 208 (12-01).

**d. Collision—Car With Car.**

**Collision of street cars—passenger injured.** Collision of street cars. Passenger injured. Unable to work. Earned \$125 per month. Judgment \$14,000. Reversed and remanded because of improper evidence as to earnings five years before.

*C. & J. Electric Co. v. Spence*, 213 Ill. 220 (12-04).

**Collision of street cars.** Collision of street cars. Passenger injured. Judgment for plaintiff. Affirmed.

*C. & M. Electric Ry. Co. v. Ullrich*, 213 Ill. 170 (12-04).

**Lady jumped off to escape collision.** Lady passenger on car injured by jumping off on suggestion of conductor. The car was about to collide with a coal wagon. Pregnancy. Release obtained by fraud. Judgment \$2,500. Affirmed.

*C. C. Ry. Co. v. McClain*, 211 Ill. 589 (10-04).

**Rear end collision.** Conductor of street car was between cars, repairing defect. Gripman on following car ran into his train. Not watching ahead. Judgment \$15,000. Affirmed in appellate. Reversed and remanded in supreme court, holding gripman and conductor fellow-servants.

C. C. Ry. Co. v. Leach, 208 Ill. 198 (2-04).

**Collision—passenger thrown against seat.** Passenger on open summer car. Saw there would be collision and rose from her seat. Was thrown forward by shock against seat in front. Subjective injuries. Judgment \$3,500. Affirmed.

C. C. Ry. Co. v. Anna Mead, 206 Ill. 174 (12-03).

**Rear end collision—passenger injured.** Passenger on car was injured by rear end collision throwing him to car floor. Judgment \$1,000. Affirmed.

C. C. Ry. Co. v. McMeen, 206 Ill. 108 (12-03).

#### e. Collisions with Vehicles.

**Collision—street car and truck wagon.** Passenger injured. Left arm and shoulder injured; bones broken. Dressmaker at \$20 per week. Judgment \$2,500. Affirmed.

C. C. Ry. Co. v. Shreve, 226 Ill. 530.

**Collision—car with wagon—driver.** Collision between wagon and street car. Plaintiff was riding on the wagon, knocked off and injured. Judgment \$5,000. Affirmed. When witness not impeached—meaning of phrase “at the time.”

C. C. Ry. Co. v. Ryan, 225 Ill. 288 (2-07).

**Collision—street car and hayrack.** Open car. Passenger sitting with back turned; struck and injured. Conflict as to whether wagon backed into car unexpectedly. Judgment \$8,000. Reversed and remanded for refusal of instruction on burden of proof to show defendant's negligence.

C. U. T. Co. v. Mee, 218 Ill. 9.

**Collision—car with wagon.** Plaintiff was driving wagon along street car track (double). Saw car coming up behind, attempted to turn off. Car struck him before he got off track. Conflict. Judgment \$3,500. Affirmed.

W. C. St. R. R. Co. v. Schulz, 217 Ill. 322 (10-02).

**Collision—car with wagon.** Plaintiff was driving team. Turned from curb to cross track. Saw car coming but judged he had time to cross. Started to cross not paying further attention to car. Car struck wagon when nearly across. Judgment for plaintiff. Affirmed.

C. U. T. Co. v. Jacobson, 217 Ill. 404 (10-05).

**Street car ran into bicycle rider—high speed—no bell.** Bicycle rider riding just ahead of car. He suddenly turned onto the track to avoid wagon. Street car struck him from behind. No bell rung. High speed. Judgment \$5,000. Affirmed.

S. Chicago C. Ry. Co. v. Kinnare, Admr., 216 Ill. 451.

**Collision—car and buggy.** Buggy run into by street car. Plaintiff in buggy. No bell. Judgment \$15,000. Reversed and remanded for excessive damages.

C. U. T. Co. v. Lauth, 216 Ill. 176.

**Collision between hack and car—passenger in hack injured.** Plaintiff was riding in hired hack. Hackman turned cab in front of car going at high speed. No bell or warning. Joint negligence. Judgment \$3,000. Affirmed.

C. U. T. Co. v. Leach, 215 Ill. 184 (4-05).

**Car ran into wagon turning out.** Truck crossing viaduct. Had turned off of car track except one rear wheel. Very dark night. Car ran up at high speed, striking wagon. Passenger injured. Judgment for plaintiff. Affirmed.

C. C. Ry. Co. v. Bennett, 214 Ill. 26 (2-05).

**Collision—car and wagon turning out.** Plaintiff was driving wagon on car track. Nine o'clock in the morning. Double



track. Ditches four feet deep on sides of car track. In turning out for car plaintiff turned onto track in front of another car. Judgment \$5,500. Affirmed.

C. N. S. St. Ry. Co. v. Strathman, 213 Ill. 252 (12-04).

**Car struck wagon turning out.** Plaintiff was driving wagon on car track. Car behind rang bell. Plaintiff attempted to turn out but car hit wagon, before he got entirely off track. Judgment for plaintiff. Affirmed.

C. C. Ry. Co. v. Matthieson, 212 Ill. 292 (12-04).

**Car struck wagon.** Plaintiff was struck by street car. Question as to impeaching release. Judgment.

C. C. Ry. Co. v. Uhter, 212 Ill. 174 (10-04).

**Collision—car and wagon turning out.** Collision between car and wagon. Wagon was turning out. Passenger injured. Judgment for plaintiff. Affirmed.

C. C. Ry. Co. v. Lannon, 212 Ill. 477 (12-04).

**Car ran into buggy—dark night.** Street car ran into buggy driven by deceased. Dark night. Motorman stopped *as quickly as possible* after seeing buggy. Judgment for defendant. Affirmed.

Josie Feith, Admx., v. C. C. Ry. Co., 211 Ill. 279 (10-04).

**Collision—car and wagon—passenger's foot caught.** Passenger on car sat on side of open car. Car ran into wagon. Plaintiff's foot caught between wagon and car. Judgment \$2,000. Affirmed.

C. U. T. Co. v. Reuter, 210 Ill. 279 (6-04).

**Car ran into wagon turning out.** Collision of street car and wagon. Plaintiff was driving wagon, just turning off track into yard of company for which he worked. Car came up and struck wagon. Judged he had time to cross. High speed. Judgment \$6,000. Affirmed.

C. C. Ry. Co. v. Gemmill, 209 Ill. 638 (4-04).

**Car ran into wagon crossing track.** Collision of street car with wagon. Plaintiff was driving load of hay across track. Judgment for plaintiff. Affirmed.

C. U. T. Co. v. Chugren, 209 Ill. 429 (4-04).

**Run away sprinkler car struck wagon.** Street sprinkler got away from its driver and ran wild striking covered wagon in which deceased was riding. Negligence in losing control of sprinkler. Judgment for plaintiff. Affirmed.

C. C. Ry. Co. v. Barker, Admr., 209 Ill. 321 (4-04).

**Car ran into wagon turning out.** Collision between car and wagon. Plaintiff driving the wagon. Turned out for car coming toward him and was struck by one coming up behind on the other track. Judgment \$6,000. Affirmed.

W. C. St. Ry. Co. v. Dougherty, 209 Ill. 241 (4-04).

**Car ran into covered wagon.** Deceased, seventy-four years old, was following wagon. Turned off to get ahead of wagon. Car ran up overturning his buggy.

C. C. Ry. Co. v. O'Donnell, Admr., 208 Ill. 267.

**Car ran into wagon.** Plaintiff was driving along car track. Turned suddenly onto the other track and car from behind struck wagon. Judgment \$2,500. Reversed and remanded in supreme court for instruction refused—"if defendant did all he could do."

C. U. T. Co. v. Browdy, 206 Ill. 615 (12-03).

**Car ran into buggy.** Plaintiff was driving on car track in covered buggy. Car behind rang bell. He tried to turn out, but car hit buggy before entirely off track. Judgment for plaintiff. Affirmed.

N. C. St. Ry. Co. v. Rodert, 203 Ill. 413 (4-03).

**Bicyclist struck by car from behind.** Deceased was riding bicycle between double car tracks. Sides of track covered with snow and slush impassable for bicycle. Car ran up behind. By

mistake deceased turned off on wrong side and ran in front of car. Judgment \$5,000. Reversed and remanded in supreme court for erroneous instruction as to use of public streets.

N. C. St. Ry. Co. v. Irwin, Exc., 202 Ill. 345 (4-03).

**Car ran into cab—passenger in cab injured.** Passenger for hire in a cab. Trolley car ran into the cab. Motorman saw car but thought it would turn off or stop. Did not check speed. Cabman did not see car. Sued both companies. Joint judgment for plaintiff. Affirmed.

Springfield C. Ry. Co. v. Puntenny, 200 Ill. 9 (10-02).

**Car ran into wagon.** Cable car ran into wagon on car track. Plaintiff driving, thought he had time to cross. Gripman saw him, but made no attempt to stop. Could have stopped. Judgment \$1,000. Affirmed.

C. C. Ry. Co. v. Sandusky, 198 Ill. 400 (10-02).

**Riding on grip-car—collision with wagon.** Passenger riding on grip-car. Train ran into a wagon which struck and injured plaintiff. Lessor and lessee jointly liable. Judgment \$3,000. Affirmed.

W. C. St. Ry. Co. v. Home, 197 Ill. 250 (6-02).

**Boy "hitching on" to wagon—car came up behind.** News-boy eleven years of age was riding on the back end of a wagon, standing up behind holding on. Wagon stopped, when the wagon behind came ahead and the pole struck plaintiff's leg cutting it severely. In bed six weeks, on crutches six weeks. Judgment \$1,475. Reversed in supreme court for erroneous instruction as to care required by plaintiff.

Ill. Iron & Metal Co. v. Weber, 196 Ill. 526 (4-02).

**Car ran into cutter.** Plaintiff was driving cutter on street car track on bright moonlight night. Motorman wore big coat that shut off view in front. Plaintiff did not see car coming up behind him until too late. No warning. Cutter overturned. Judgment \$5,000. Affirmed.

W. C. St. Ry. Co. v. Petters, 196 Ill. 298 (4-02).

**Car ran into wagon turning out.** Plaintiff was driving wagon along car track, sitting on top of baled hay. Turned off to escape car coming toward him and turned in front of car coming up behind him. Knocked off wagon. Judgment \$7,500. Affirmed.

C. C. Ry. Co. v. Anderson, 193 Ill. (10-01).

**Car ran into wagon crossing track.** Trolley car struck wagon crossing track. Motorman had time to slow up if he had looked out. Struck hind wheel. Action by wife as administratrix. Judgment \$5,000. Affirmed.

C. C. Ry. Co. v. Olls, Admx., 192 Ill. 514 (10-01).

**Car backed up onto wagon.** Plaintiff was driving wagon along street. Trolley car passed her. She started to cross behind the car when it backed up without warning and overturned wagon injuring plaintiff. Judgment for plaintiff. Affirmed.

Central Railway Co. v. Knowles, 191 Ill. 241 (6-01).

**Car ran into buggy.** Plaintiff driving horse and buggy along street car track at rapid speed. Car ran up behind and struck buggy overturning it. Conflict of evidence as to warning from car. Judgment for plaintiff. Reversed and remanded on instruction.

N. C. St. Ry. Co. v. Penser, 190 Ill. 67 (4-01).

**Collision—car with wagon crossing—driver injured.** Street car ran into wagon crossing the track. Wagon loaded with 4000 pounds. Struck wagon when nearly across, knocking plaintiff off—permanent injury. Judgment \$3000. Affirmed. 1. Personal injury action not assignable. 2. Juror talking over phone—not error—when. Judgment for plaintiff. Affirmed.

W. St. Ry. Co. v. Lundahl, 183 Ill. 284 (12-99). (For facts see 82 Ill. App. 553.)

**Collision—with buggy.** Plaintiff driving in a buggy was hit by trolley car that came up from behind him, knocking him

out. What evidence of injury good under general averment. Judgment \$10,000. Affirmed.

W. C. St. Ry. Co. v. Levy, 182 Ill. 525 (10-99).

**Collision—car with wagon loaded with lumber—passenger.** Plaintiff was passenger on defendant's car. Car ran into a wagon loaded with lumber. The ends of the lumber broke through the side of the car, striking plaintiff. Remittitur of \$3,500—in appellate. Judgment \$3,500. Affirmed.

C. C. Ry. Co. v. Anderson, 182 Ill. 298 (10-99).

**Collision—car with buggy.** Street car ran into a buggy in which plaintiff was riding, throwing him out. Judgment \$5,000. Affirmed.

N. C. St. Ry. Co. v. Zelger, 182 Ill. 9 (10-99).

**Collision—car and wagon—driver injured.** Cable train ran into wagon. Driver thrown out—high speed. Judgment \$2,000. Affirmed.

W. C. St. Ry. Co. v. Musa, 180 Ill. 130 (6-99).

Cable train struck a wagon and knocked it against plaintiff, a pedestrian. High speed. Judgment \$1,500. Affirmed.

C. C. St. Ry. Co. v. Roach, 180 Ill. 174 (6-99).

**Car ran into wagon.** Driver thrown out and injured. Judgment for plaintiff. Affirmed.

W. C. St. Ry. Co. v. Foster, 175 Ill. 396.

**Car collided with wagon. Passenger injured.** Judgment \$4,000. Affirmed.

W. C. St. Ry. Co. v. Carr, 170 Ill. 478.

**Street car ran into wagon on the track—driver thrown out.** Judgment \$1,350. Affirmed.

Calumet St. Ry. Co. v. Christenson, 170 Ill. 383 (70 Ill. App. 84 affd).

**Street car collided with wagon turning off track.** Wagon had turned out for one car. Was crossing behind that car when a car from the opposite direction ran up at high speed and struck the wagon. Plaintiff was riding on the wagon with the driver and was thrown off and injured. Judgment \$3,000. Reversed for refusal of instruction as to the credibility of plaintiff's testimony.

W. C. St. R. R. Co. v. Dougherty, 170 Ill. 379 (64 Ill. App. 599, r'vd).

**Street car ran into cab.** Driver injured. Judgment \$2,500. Affirmed.

W. C. St. Ry. Co. v. Fishman, 169 Ill. 196.

**Car struck buggy crossing track.** Another wagon obscured the view. Car suddenly increased speed. Judgment \$2,000. Affirmed.

W. C. St. Ry. Co. v. McCallum, 169 Ill. 240.

**Collision of street cars. Pedestrian injured.** Car fell on. Judgment \$2,000. Affirmed.

W. C. St. Ry. Co. v. Feldstein, 169 Ill. 139.

**Collision—street car and wagon.** Passenger injured. Judgment \$2,500. Affirmed.

W. C. St. Ry. Co. v. McNulty, 166 Ill. 203.

**Collision—street car and express wagon.** Plaintiff was riding on the wagon. High speed of car. Judgment \$5,500. Affirmed.

W. C. St. Ry. Co. v. Mueller, 165 Ill. 499.

**Car collided with buggy.** Buggy destroyed. At crossing. Judgment by default \$160. Affirmed.

C. C. Ry. Co. v. Jennings, 157 Ill. 274.

**Passenger on street car injured by rear end collision in La Salle street tunnel.** Thrown to floor of car. Judgment \$2,500. Affirmed.

N. C. St. Ry. Co. v. Boyd, 156 Ill. 416.

**Collision. Street car with buggy** occupied by three boys. Plaintiff sixteen years old thrown out and injured. Horse shied onto track. High speed of car proximate cause. Judgment for plaintiff. Affirmed.

Central Ry. Co. v. Allmon, 147 Ill. 471.

**Collision of street car and buggy.** Plaintiff had started to turn out for street car but was prevented from getting off the track because of a sliding of the wheel of the buggy. He shouted to the driver of the horse car to stop—driver failed to do so—car struck wagon throwing plaintiff to the ground. Judgment for plaintiff. Reversed because of an instruction of credibility of witness.

C. W. D. Ry. Co. v. Bert, 69 Ill. 388.

#### **f. Ejected From Car.**

**Transfer refused—plaintiff put off moving car.** Passenger paid fare and received a transfer, the conductor assuring him the transfer was good on the line he desired to transfer to. He changed cars, offered transfer which was refused and he was thrown off by the conductor while the car was in motion. Ordinances as to transfers pleaded—conflict. Judgment \$10,000. Affirmed.

C. U. T. Co. v. Brethauer, 223 Ill. 521 (10-06).

**Old man put off moving car eleven p. m.** Passenger seventy-one years old ejected from car by conductor at eleven p. m. on dark, rainy night. Had wordy quarrel with conductor. Car moving. Judgment \$1,100. Reversed and remanded for erroneous instruction.

Tri-City Ry. Co. v. Gould, 217 Ill. 317 (10-05).

**Conductor threw newsboy off street car** in front of car coming from opposite direction on parallel track. Leg broken. Judgment for plaintiff. Affirmed.

N. C. Ry. Co. v. Gastka, 128 Ill. 513.

**Boy thrown off car by conductor**, and died as result of his injuries. His declaration just after the injury was the only evidence. Judgment for plaintiff. Reversed in supreme court on ground deceased's declarations were not part of the *res gestae*.

C. W. D. Ry. Co. v. Becker, Admr., 128 Ill. 544.

**Ejected from street car by conductor**. No severe injury apparent. Physicians testified to possible mental weakness. Action against company and conductor. Judgment \$12,000. Reversed as excessive.

C. C. Ry. Co. v. Henry, 62 Ill. 142.

#### **g. Fell or Jerked Off Car.**

**Riding on car step—jolted off by lurch of car**. Passenger on crowded street car hanging on by hand bar on platform. High speed. Car lurched and threw him off as he was reaching for a transfer from conductor. Leg amputated below knee. Judgment \$6,500. Affirmed.

The Alton Light and Gas Co. v. Oller, 217 Ill. 15.

**Stepping to grip car—thrown from car**. Passenger stepping from car to grip car at conductor's request, thrown from car. Judgment \$2,000. Affirmed.

C. C. Ry. Co. v. McCaughna, 216 Ill. 202.

**Pushed off car in panic—explosion**. Passenger pushed off car in panic due to explosion of "fuse"—*res ipsa loquitur*. Judgment \$4,500. Affirmed.

C. U. T. Co. v. Newmiller, 215 Ill. 383 (4-05).

**Riding on back platform—thrown off by jolt of car**. Passenger riding on back platform. Car crowded. On steps holding on by hand rails. Sudden jolt of car, due to sag in rail, threw plaintiff off. Skull fractured; mind affected. Judgment \$10,000. Affirmed.

C. U. T. Co. v. Lawrence, 211 Ill. 373 (10-04).



**Riding on foot board—sudden jerk.** Crowded street car was crossing railroad tracks. Plaintiff got on foot board and rode some distance looking for seat. Sudden jerk threw him off and under car. Hand cut off. Judgment for plaintiff. Affirmed.

S. C. C. Ry. Co. v. Dufresne, 200 Ill. 456 (12-02).

**Failed to get off car—stood talking on foot board.** Passenger on car intended to get off at corner. Did not indicate his desire to get off. Stood on foot board talking to his wife when a car started. He was thrown off. Judgment for defendant. Affirmed.

A. Ackerstadt v. C. C. Ry. Co., 194 Ill. 616 (2-02).

**Standing on platform of street car—thrown off.** Passenger thrown off car, while standing on platform. Judgment \$5,000. Affirmed.

N. C. St. Ry. Co. v. Hutchinson, 191 Ill. 104 (6-01).

**Thrown off street car—sudden jerk.** Passenger riding on platform thrown off by sudden jerk of car. Judgment for plaintiff. Affirmed.

N. C. St. Ry. Co. v. Baur, 179 Ill. 126 (4-99).

**Passenger thrown from street car.** The conductor asked the passengers to assist in pushing the derailed car onto the track again. After this was done, plaintiff stood on the platform—the car being crowded. Owing to some cause that does not clearly appear, plaintiff was thrown from the car and killed. Judgment for plaintiff. Affirmed.

C. C. Ry. Co. v. Young, 62 Ill. 238.

#### **h. Miscellaneous.**

**Street car jumped track striking wagon.** Driver injured. Judgment \$3,500. Affirmed.

C. U. T. Co. v. Jerka, 227 Ill. 95.

**Collision—street car and fire engine.** Collision of trolley car and fire engine at street crossing. Car going at high speed.

No bell rung for crossing. Fireman killed. Judgment \$5,000. Affirmed.

C. C. Ry. Co. v. McDonough, 221 Ill. 69 (4-06).

**Defective trolley car handle caused collision.** Conductor on street car was trying to lower fender on his car. Another car behind him was too close to his car. He asked the motorman to back up. Instead of backing the car went ahead, owing to the handle used by the motorman. Handle had been furnished motorman by the barn boss and was wrong size. Judgment for plaintiff. Affirmed.

C. U. T. Co. v. Sawusch, 218 Ill. 130 (11-05).

**Employee in car barn injured in collision.** Employee of street car company whose duty it was to break up trains in car barn was injured by regular train running into car he was moving in the barn. Judgment \$1,500. Affirmed.

N. C. St. Ry. Co. v. Aufman, 221 Ill. 614 (6-06).

**Repair car started while repairer was on top repairing wire.** Car repairer employed by defendant, was ordered to go on car ladder fifteen feet high and fix trolley wire. While he was on the ladder the car was started up, throwing him off. Conflict of evidence. (Same case, 207 Ill. 632.) Judgment \$3,000. Affirmed.

The Coal Belt Electric Ry. Co. v. Kays, 217 Ill. 340 (10-05).

**Car ran into timber carried by two men.** Two men were carrying heavy timber along street. Car ran into the timber from behind, injuring man on end nearer the car. Judgment \$1,600. Affirmed.

C. C. Ry. Co. v. Nelson, 215 Ill. 436 (4-05).

**Pole too near elevated structure—guard hit by.** Guard on elevated road leaned out from car inspecting the car, and ran against telephone pole set too close to the tracks. Suit against Elevated Road Company and Telephone Company and

Electric Company. Judgment (joint) \$8,000. Reversed and remanded (one defendant not guilty).

South Side Elevated Ry. Co. v. Nesvig, 214 Ill. 463 (4-05).

**Boy jumped off car, in front of another car.** Newsboy was stealing a ride. The conductor threatened while car was at full speed. He jumped in front of another car and was killed. Willful negligence of conductor. Judgment \$5,000. Affirmed.

C. C. Ry. Co. v. O'Donnell, Admr., 207 Ill. 478 (2-04).

**Defective trolley fell.** Defective trolley-pole, fell from car striking passenger who was on street transferring from car to car. Judgment \$3,000. Affirmed.

C. C. Ry. Co. v. Carroll, 206 Ill. 318 (12-03).

**Conductor on foot board hit by wagon.** Conductor of street car was on foot board of car collecting. Wagon of defendant at high speed ran into the car at intersection of streets. Car almost stopped. Leg broken. Judgment \$2,000. Affirmed.

Knickerbocker Ice Co. v. Benedix, 206 Ill. 362 (12-03).

**Passenger injured.** No facts. Judgment \$10,000. Affirmed. (Not reported in appellate.)

C. U. T. Co. v. Fortier, 205 Ill. 305 (10-03).

**Bicycle ran into conductor stepping off car.** Plaintiff was riding bicycle in direction car was going, just behind car. Conductor stepped off car in front of bicycle throwing rider to the ground. Judgment \$1,000. Reversed in supreme court. Held—contributory negligence by bicyclist.

N. C. St. Ry. Co. v. Cossar, 203 Ill. 608 (6-03).

**Coupler at terminal injured.** Car kicked back. Coupler employed by defendant at its terminal station. While between two cars uncoupling them, motorman "kicked" a car against the cars he was between. Left leg and arm amputated. Judgment \$12,000. Affirmed.

Met. West Side "L" Ry. Co. v. Fortin, 203 Ill. 454 (6-03).

**Boy riding on foot board—struck tunnel wall.** Boy eighteen years old, riding on foot board of car, was knocked off and killed by striking wall in La Salle street tunnel. Car crowded. Deceased was getting fare out of his pocket. Judgment \$5,000. Reversed and remanded in supreme court on instruction as to degree of care required of street car operators.

N. C. St. Ry. Co. v. Polkey, Admr., 203 Ill. 225 (4-03).

**Liability of lessor and lessee.** No facts. Lessor and lessee both liable for injury to passenger on street car. Res adjudicata. Judgment \$1,250. Reversed because of prior judgment.

Anderson v. W. C. St. Ry. Co., 200 Ill. 329 (12-02).

**Passenger injured.** Passenger on street car injured. No facts. Judgment \$10,000. Affirmed. (Not reported in appellate.)

C. & P. St. Ry. Co. v. Woodruff, 192 Ill. 544 (10-01).

**Brake lever in grip car hit passenger.** Iron brake lever on grip car fell back hitting passenger—boy sixteen years old, standing up—no seats—grip man had told him to move, but not of the danger. 1. Instruction. Judgment \$3,000. Affirmed.

N. C. St. Ry. Co. v. Johnson, 180 Ill. 385 (6-99).

**Passenger—sudden jerk.** Passenger on street car thrown down by sudden jerk of car. Judgment for plaintiff. Affirmed.

N. C. St. R. R. Co. v. Honsinger, 175 Ill. 318.

**Car suddenly stopped.** Passenger thrown against seat. Judgment \$2,000. Affirmed.

W. C. St. Ry. Co. v. Kennelly, 170 Ill. 508.

**Boy on foot board hit by horse drawing car on opposite track.** Horse was outside tracks. Knocked boy off. Judgment \$5,000. Affirmed.

W. C. St. Ry. Co. v. Yund, Jr., 169 Ill. 47.

**Passenger thrown to floor—sudden jerk.** Car started before she was seated. Left arm broken. Judgment for plaintiff. Affirmed.

W. C. St. Ry. Co. v. Nash, 166 Ill. 528.

**Passenger riding on grip car hit by wagon passing along side of car. Crowded street. Judgment \$2,500. Reversed. Defendant's negligence not shown.**

C. C. Ry. Co. v. Rood, 163 Ill. 477.

**Street car ran off track. Passenger injured. Judgment \$4,000. Affirmed.**

Elgin City Ry. Co. v. Salisbury, 162 Ill. 187.

**Passenger thrown to floor of car. Cable car caught in slot. Car behind ran against it to push it out. Sudden jerk threw plaintiff down. Judgment \$1,800. Affirmed.**

W. C. St. Ry. Co. v. Estep, 162 Ill. 130.

**Defective apparatus on grip car. Handle flew back striking gripman in the head. Defective car was being pushed by grip car behind—gripman acted on orders of "starter." Judgment for plaintiff. Affirmed.**

W. C. St. Ry. Co. v. Dwyer, 162 Ill. 482.

**Passenger on street car struck by pole of wagon. Horse frightened and turned so as to strike car. Judgment \$1,000. Affirmed. Action against owner of wagon.**

Best Brewing Co. v. Dunlevy, 157 Ill. 141.

**Habitual drunkard killed by street car. No facts. Judgment \$2,000. Reversed and remanded for excessive damages, the plaintiff being a brother not dependent on deceased.**

N. C. St. Ry. Co. v. Brodie, Admx., 156 Ill. 317.

**Trailer became uncoupled on steep grade and ran down the hill. Plaintiff was thrown from the crowded car in the descent. Car overloaded. Brakes not set. Judgment \$1,500. Affirmed.**

Joliet Street Ry. Co. v. Call, 143 Ill. 177.

**Pole too near street car track. Plaintiff got on moving horse car but before he got off the foot board he struck pole near track and was knocked off. Street car company was rearrang-**

ing its tracks and had laid temporary track too near the pole. Judgment for plaintiff. Affirmed.

N. C. St. R. R. Co. v. Williams, 140 Ill. 275.

**i. Passenger Riding on Step, etc.**

**Riding on street car step—collision with wagon.** Passenger was riding on front step of car. Fare had been accepted there. Car ran into a wagon turning off the track, because motorman increased speed too soon. Plaintiff's arm permanently injured. Thumb and little finger off. Judgment \$9,000. Affirmed.

Chicago Consolidated T. Co. v. Schritter, 222 Ill. 364 (10-06).

**Riding a bumper—struck by car behind—foot crushed.** Passenger riding on bumper of street car. Platform crowded. Paid fare on platform. Car behind ran up and struck plaintiff. Crushed right foot. Judgment \$8,000. Affirmed.

C. C. Ry. Co. v. Schmidt, 217 Ill. 396 (10-05).

**Riding on foot board—struck by wagon.** Passenger riding on foot board because car was crowded. Caught between a wagon and the car. Ribs fractured, collar bone broken, etc. Judgment \$4,500. Affirmed.

C. C. Ry. Co. v. Creech, 207 Ill. 400 (2-04).

**Riding on foot board—struck side of bridge.** Plaintiff was riding on foot board of summer car. Had paid fare while there. Struck the side of a bridge of which he knew nothing, knocking him off. No warning. Judgment \$1,500. Affirmed.

W. C. St. Ry. Co. v. Marks, 182 Ill. 15 (10-99).

**j. Pedestrian Run Down.**

**Pedestrian crossing street hit by street car.** Release signed by plaintiff introduced and no evidence offered to show it fraudulent. Judgment \$1,000. Reversed and remanded on ground release barred action.

C. U. T. Co. v. O'Connell, 224 Ill. 428.

**Open switch—car jumped track—struck pedestrian.** Car ran into open switch, jumped track and struck plaintiff standing near the track. Judgment \$8,000. Affirmed.

C. C. Ry. Co. v. Bruley, 215 Ill. 464.

**Child struck by street car.** Boy five years old, ran into or was run into by car. High speed, no bell. Judgment \$2,500. Reversed and remanded because of erroneous special interrogatories.

C. C. Ry. Co. v. Jordan, Admr., 215 Ill. 390 (4-05).

**Car struck pedestrian crossing street.** Plaintiff was crossing street diagonally. Car ran up at high speed, no bell, and hit him. Judgment for plaintiff. Affirmed.

C. U. T. Co. v. O'Donnell, Admr., 211 Ill. 349 (10-04).

**Child crossing street—struck by car.** Boy four years old killed by trolley car while attempting to cross track. Three trials. Judgment \$3,500. Affirmed.

N. C. St. Ry. Co. v. Johnson, 205 Ill. 32 (10-03).

**Pedestrian struck by trolley car.** Plaintiff was struck by cable car while crossing street. No bell or warning. Judgment \$1,000. Affirmed.

C. C. Ry. Co. v. Loomis, 201 Ill. 118 (2-03).

**Car stopped middle of block—passenger struck by another car.** Conductor failed to stop car at corner as requested by plaintiff. Stopped in middle of block. Plaintiff got off and while walking around end of car to get to sidewalk was struck by car coming in opposite direction, on the other track. Judgment \$3,000. Affirmed.

W. C. St. Ry. Co. v. Buckley, 200 Ill. 260 (12-02).

**Boy crossing street—hit by car.** Boy eight and one-half years of age, was hit by street car, while attempting to cross street. Judgment for plaintiff. Affirmed.

Edwin Potter, Receiver, v. Leviton, 199 Ill. 93 (10-02).

**Struck by car from opposite direction.** Plaintiff stepped from behind northbound upon track, in front of southbound train. No gong. High speed—no head light. Judgment \$2,250. Affirmed.

C. C. Ry. Co. v. Fennimore, 199 Ill. 9 (10-02).

**Pedestrian struck by trolley at crossing.** Plaintiff was struck by trolley car at street crossing. No particulars (see 100 Ill. App. 306). Judgment for plaintiff. Affirmed.

C. C. Ry. Co. v. Martenson, 198 Ill. 511 (10-02).

**Pedestrian crossing street—hit by car.** Plaintiff was struck by trolley car while crossing street. No bell. No warning. Leg amputated below knee. Judgment \$8,400. Affirmed.

Central Ry. Co. v. Bannister, 195 Ill. 48 (2-02).

**Child crossing street—hit by car.** Minor, six years old, struck by trolley while crossing street. Suit by father as nearest friend. Conflict as to bell and speed. Judgment \$1,500. Affirmed.

S. Chicago City Ry. Co. v. Purvis, 193 Ill. 454 (12-01).

**Child in street hit by car.** Boy five years old struck by street car going fourteen miles an hour. No bell. Boy last seen standing on sidewalk. Leg amputated below knee. Extensive discussion. Judgment for plaintiff. Affirmed.

C. C. Ry. Co. v. Touhy, 196 Ill. 410 (4-02). 196-410

**Pedestrian struck by cable train.** Boy attempted to run across street in front of approaching cable train and was caught. Judgment for defendant. Affirmed.

Rack v. C. C. Ry. Co., 173 Ill. 289.

**Pedestrian struck by street car while crossing street.** Girl nine years of age was killed. Judgment \$5,000. Affirmed. Motion to direct—ignored where one of the regular series. Appellate court—opinion of not part of the record. Instruction—on due negligence—held not harmful. Instruction—on damages not harmful.

Calumet Elec. Ry. Co. v. Van Peet, Admx., 173 Ill. 70.



**Child struck by street car.** Killed. Judgment \$2,000. Affirmed.

W. C. St. Ry. Co. v. Scanlan, Admr., 168 Ill. 34.

**Pedestrian caught between street cars.** Ten inches apart when passing. Judgment \$15,000. Affirmed.

W. C. St. Ry. Co. v. Annis, 165 Ill. 475.

**Pedestrian hit by street car.** Boy eight years old crossing street at a run. Failure to keep watch. High speed. Judgment for plaintiff. Affirmed.

W. C. St. Ry. Co. v. Sullivan, 165 Ill. 302.

**Struck by electric car.** Boy seven years old was being chased by several dogs. In trying to escape the dogs he ran in front of a trolley car. Leg broken. Car defective. Motor-man could not stop. Judgment \$2,500. Affirmed.

Springfield C. Ry. Co. v. Welsh, 155 Ill. 511.

**Pedestrian (minor) struck by trolley car while crossing street.** High speed. Failure to look out. Judgment \$1,500. Affirmed.

Central Ry. Co. v. Serfass, 153 Ill. 379.

**Street car horses ran away.** Lady run down as she was about to take a street car. Horses had broken from another car and ran down the track. Judgment \$2,000. Reversed in supreme court because of erroneous instructions given by the judge, he having refused all instructions offered by counsel.

N. C. St. Ry. Co. v. Louis, 138 Ill. 9.

**Child struck by cable train.** Leg amputated. High speed. No bell. Waited for car north to pass—was caught by car south. Six years old. Judgment \$15,000. Affirmed

C. C. Ry. Co. v. Wilcox, 138 Ill. 370.

**Child run down by horse car.** Was playing in street—threw water on girls passing. They started after him. He ran into the street looking back, and ran into the horses of a horse car

coming down the track at high speed. Conflict as to speed and whether driver was drunk. Four trials. Judgment \$6,000. Reversed in supreme court because of the admission of impeaching testimony without proper foundation. Two dissent.

Quincy Horse Ry. Co. v. Gnuse, 137 Ill. 264.

**Horse car ran over child seventeen months old.** Foot crushed and amputated. Conductor saw the child on crossing near track but took no precautions. Child heard horses coming behind him, and becoming confused, ran into the car. Judgment \$1,750. Affirmed.

C. W. D. Ry. Co. v. Ryan, 131 Ill. 474.

**Boy six years old struck by street car while crossing street.** Had just alighted from car—stepped around end of that car in front of one running in opposite direction. High speed—no bell or warning. Judgment \$1,500. Affirmed.

C. C. Ry. Co. v. Robinson, 127 Ill. 9.

**Pedestrian run down by street car.** Same case reviewed in 69 Ill. 170. Judgment \$3,000. Reversed because of excessive damages.

Chicago W. D. Ry. Co. v. Hughes, 87 Ill. 94.

#### **k. Thrown Down While in Car.**

**Car suddenly stopped—passenger thrown to floor—spine hurt.** Car going at high speed was suddenly stopped, so as to throw passenger violently forward. Spine injured. Quare as to “faking” injury. Judgment \$8,000. Reversed and remanded on instruction and attitude of trial judge.

C. U. T. Co. v. Miller, 221 Ill. 49 (10-04).

**Holding on to strap—jerk of car.** Passenger on street car, standing up holding on by a strap. Car suddenly stopped throwing other passengers against plaintiff. Incipient hernia developed. Judgment \$2,000. Affirmed.

C. C. Ry. Co. v. Morse, 197 Ill. 607 (6-02).

**TRESPASSERS AND LICENSEES—LAW.**

Licensee—duty of leasing company toward.

L. S. & M. S. Ry. Co. v. Enright, 227 Ill. 403.

Licensee on right of way—railroad company is under no duty to warn of danger.

Thompson v. C. C. C. & St. L. Ry. Co., 226 Ill. 542.

The question raised by injury to licensee on right of way is was defendant guilty of willful negligence causing the injury.

Thompson v. C. C. C. & St. L. Ry. Co., 226 Ill. 542.

Act of conductor forcing trespasser to jump is actionable negligence.

C. C. Ry. Co. v. O'Donnell, 207 Ill. 478.

Evidence that plaintiff was "mere licensee" held sufficient.

I. C. R. R. Co. v. Hopkins, 200 Ill. 122.

Person on railroad track held not to be—when—tracks laid in street.

Ill. T. Co. v. Mitchell, 214 Ill. 151.

Stockshipper—evidence that he was, held insufficient.

E. J. & E. Ry. Co. v. Thomas, 215 Ill. 158.

Where license has been given to plaintiff to be on right of way—force of.

I. C. R. R. Co. v. Elcher, 202 Ill. 556.

Riding on pass in caboose of freight train—held not to be.

I. C. R. R. Co. v. Leiner, 202 Ill. 624.

On railroad bridge—excursion train stopped on near side of bridge. Passengers walked over bridge, and so returned. Train backed up and caught plaintiff on bridge—held not a trespasser.

Chicago T. T. R. R. Co. v. Gruss, 200 Ill. 195.

Willful negligence in running down excursionist on bridge, shown—not a trespasser.

Chicago T. T. R. R. Co. v. Koloski, 199 Ill. 383.

When a question of fact for the jury.

Chicago T. T. R. R. Co. v. Koloski, 199 Ill. 383.

One upon premises by invitation is not a mere licensee.

Heldmaier v. Cabbs, 195 Ill. 172.

One using tracks for travel is held to be although it was customary for the public to do so.

James v. I. C. R. R. Co., 195 Ill. 327.

Duty of railroad company toward trespasser after his presence in place of danger is known.

Martin, Admr., v. C. & N. W. Ry. Co., 194 Ill. 138.

On railroad right of way—rights of trespasser—doctrine as to—willful negligence required.

I. C. R. R. Co. v. O'Connor, 189 Ill. 559.

Employe of independent contractor piling lumber on premises of contractor's employer is not a mere licensee.

John Spry Lumber Co. v. Duggan, 182 Ill. 218.

Plaintiff shown to be trespasser on right of way—rule as to—must show wanton negligence.

James v. I. C. R. R. Co., 195 Ill. 327.

Is question of fact for jury where a custom of large numbers of men gathering at a gate on the right of way is shown—held not a trespasser here.

C. B. & Q. Ry. Co. v. Murowski, 179 Ill. 77.

Duty of railroad company toward one stealing a ride—liable for willful injury to.

I. C. R. R. Co. v. King, 179 Ill. 91.

One boarding freight train on advice of ticket seller, is not, where no notice that the train did not carry passengers.

I. C. R. R. Co. v. Davenport, 177 Ill. 110.

Negligence in putting trespasser off a train is not actionable unless wanton.

Wabash R. R. Co. v. Kingsley, 177 Ill. 558.

Proof of public highway—what is.

B. & O. S. W. Ry. Co. v. Farth, 175 Ill. 58.

Union Stock Yards Co. v. Karlik, 170 Ill. 403.

Whether plaintiff was a trespasser is a question of fact—  
child looking into elevator shaft struck by descending elevator.

Siddall v. Jansen, 168 Ill. 43.

When trespasser may recover for injury.

Pierce, Receiver, v. Walters, 164 Ill. 560.

Duty of engineer to stop where trespasser is on bridge in  
dangerous position—shown.

Pierce, Receiver, v. Walters, 164 Ill. 560.

Custom of using track by many people does not excuse tres-  
passer—exception when trespasser is seen in danger

Wabash Ry. Co. v. Jones, 163 Ill. 167.

Fireman on premises to put out fire is a licensee. Owner  
owes him no duty.

Gibson v. Leonard, 143 Ill. 184.

One boarding car and injured before paying fare, is not—  
(131 Ill. 61 distinguished).

N. C. St. Ry. Co. v. Williams, 140 Ill. 275.

Duty of railroad company toward—when liable.

L. S. & M. S. Ry. Co. v. Bodemer, 139 Ill. 597.

No duty to guard against injury to licensee.

L. S. & M. S. Ry. Co. v. Bodemer, 139 Ill. 597.

Duty of railroad company toward licensee.

C. & N. W. Ry. Co. v. Dunleavy, 129 Ill. 135.

When workman is shown to be.

Blanchard v. L. S. & M. S. Ry. Co., 126 Ill. 417.

When railroad company is liable for injury to

Blanchard v. L. S. & M. S. Ry. Co., 126 Ill. 417.

Flagman at crossing is not under duty to protect.

C. R. I. & P. Ry. Co. v. Elninger, 114 Ill. 79.

When employe of railroad company using tracks of defendant (another company) is not.

I. C. R. R. Co. v. Frelka, 110 Ill. 498.

One using right of way as foot path.

Austin, Admx., v. C. R. I. & P. Ry. Co., 91 Ill. 35.

Trespasser on right of way—no cause of action.

L. S. & M. S. R. R. Co. v. Hart, 87 Ill. 529.

Trespasser run down by engine, no recovery.

I. C. R. R. Co. v. Hetherington, 83 Ill. 510.

Trespasser—child in street near track—held not to be.

P. Ft. W. & C. Ry. Co. v. Bumstead, 48 Ill. 221.

Person crossing railroad tracks to go to depot held not a trespasser.

I. C. R. R. Co. v. Hammer, 72 Ill. 347.

Trespasser of right of way—who is—shown. The use of railroad track by public without objection by the company—force of—where trespasser injured.

I. C. R. R. Co. v. Godfrey, 71 Ill. 500.

**VARIANCE.**

Variance—proof of defective insulation is supported by averment of order to take hold of wire, and of ignorance that it was charged.

Chicago Suburban Water Co. v. Hyslop, 227 Ill. 308.

Variance—between proof and pleadings—when material.

Republic Iron & S. Co. v. Lee, 227 Ill. 246.

Variance—motion to dismiss case because of—when the variance is sufficiently pointed out.

Republic Iron & S. Co. v. Lee, 227 Ill. 246.

Variance—objection comes too late at the close of all the evidence where no objection was made when the evidence was offered. (177 Ill. 331 explained).

City of Chicago v. Bork, 227 Ill. 60.

Variance as to the defect.

Jones & Adams Co. v. George, 227 Ill. 64.

Question as to is, is there any evidence tending to prove the averment complained of; if there is, no variance exists.

C. U. T. Co. v. Brethauer, 223 Ill. 521.

In proof of surplusage in declaration is immaterial and not subject to objection.

Postal Tel.-Cable Co. v. Likes, 225 Ill. 249.

Held not shown.

Richardson v. Nelson, 221 Ill. 254.

C. U. T. Co. v. May, 221 Ill. 530.

Question of—must be raised at trial.

Parmalee Co. v. Wheelock, 224 Ill. 194.

Ill. T. R. Co. v. Thompson, 210 Ill. 226.

Pressed Steel Co. v. Herath, 207 Ill. 576.

Evidence of held sufficient but cured by amendment—proof of defect in machine.

*Franke v. Hanley*, 215 Ill. 216.

In description of injury held not shown—"divers bones of body" broken alleged; broken leg and injured elbow proven.

*Elgin A. & S. T. Co. v. Wilson*, 217 Ill. 417.

Question of how saved—not saved here.

*Alton R. G. & E. Co. v. Webb*, 219 Ill. 563.

In averment and proof of ownership of electric wire in alley—shown.

*Hayes v. Chicago Telephone Co.*, 218 Ill. 414.

Question of must be raised at trial—why.

*C. C. Ry. Co. v. McClain*, 211 Ill. 589.

Cannot be first raised in appellate court.

*Pressed Steel Co. v. Herath*, 207 Ill. 576.

Question of must be specifically raised and pointed out in trial court.

*I. C. R. R. Co. v. Behrens*, 208 Ill. 20.

Does not exist if the substance of the allegation complained of is proven.

*C. & G. T. Ry. Co. v. Spurney*, 197 Ill. 471.

Objection as basis of, when to evidence, must be specifically pointed out at trial.

*C. & E. I. R. R. Co. v. Filler*, 195 Ill. 9.

When cured by verdict.

*Alton Railway & I. Co. v. Foulds, Admr.*, 190 Ill. 367.

Question as to must be raised at the trial.

*C. C. Ry. Co. v. Mager*, 185 Ill. 336.

Is cured by amendment that conforms pleadings to proof.

*Ross et al. v. Shanley*, 185 Ill. 390.

Question of is waived where party objecting secured instruction as to the law applicable to the facts as shown, without reference to the question of variance.

*Ill. Steel Co. v. Novak*, 184 Ill. 501 (128 Ill. 163, 146 Ill. 614, approved).



Party objecting must object to evidence when offered, and point out his objection.

*Swift & Co. v. Rutkowski*, 182 Ill. 18.

Held not sufficient ground upon which to instruct jury to disregard count in which it is alleged to appear; under section 50 Practice Act.

*Franklin P. & P. Co. v. Behrens*, 181 Ill. 340.

Must be duly raised at trial.

*Sugar Creek Mining Co. v. Peterson*, 177 Ill. 324.

Is never presumed—must be shown.

*C. & A. R. R. Co. v. Clausen*, 173 Ill. 100.

Objection must be raised at trial.

*C. & N. W. Ry. Co. v. Gillison*, 173 Ill. 264.

*City of E. Dubuque v. Burlyle*, 173 Ill. 553.

*Probst Con. Co. v. Foley*, 166 Ill. 31.

*Swift & Co. v. Madden*, 165 Ill. 41.

Must be pointed out when evidence is offered.

*Village of Chatworth v. Rowe*, 166 Ill. 114.

*C. & A. R. R. Co. v. Byrum*, 153 Ill. 131.

Motion to exclude evidence because of must point out the variance.

*City of Chicago v. Seben*, 165 Ill. 371.

Cannot be first raised on appeal.

*C. & A. R. R. Co. v. Dumser*, 161 Ill. 191.

*C. & G. T. Ry. Co. v. Gaemowski*, 155 Ill. 189.

How raised so as to save for review in upper court as question of law.

*Harris v. Shebek*, 151 Ill. 287.

*Libby M. & L. v. Scherman*, 146 Ill. 541.

Between evidence and averment of destination of passenger—held material.

*Wabash Western Ry. Co. v. Friedman*, 146 Ill. 583.

Must be raised at trial—method of.

*C. B. & Q. Ry. Co. v. Dickson*, 143 Ill. 368.

*Betting v. Hobbett*, 142 Ill. 72.

*City of Chicago v. Moore*, 139 Ill. 201.

When not material if evidence supports any averment.

N. C. St. Ry. Co. v. Cotton, 140 Ill. 487.

When not shown—evidence tending to prove allegation.

L. S. & M. S. Ry. Co. v. Hundt, 140 Ill. 525.

City of Chicago v. Moore, 139 Ill. 201.

Must be raised at the trial.

McCormick Mach. Co. v. Burandt, 136 Ill. 170.

What is—as to place of injury.

L. S. & M. S. Ry. Co. v. Ward, 135 Ill. 511.

When not properly saved by general objection.

L. S. & M. S. Ry. Co. v. Ward, 135 Ill. 511.

Raised too late in appellate court.

Consolidated Coal Co. v. Wombacher, 134 Ill. 64.

C. & P. Ry. Co. v. Clough, 134 Ill. 586.

Objection to waived unless made at trial.

Wight Fire Proofing Co. v. Poczekal, 130 Ill. 139.

Averment “broken boards;” proof “loose boards” held not.

City of Rock Island v. Cuinely, 126 Ill. 408.

Averment “wrist” broken; proof “radius” broken—good.

City of Rock Island v. Cuinely, 126 Ill. 408.

As to immaterial allegation not fatal.

Pennsylvania Co. v. Conlan, 101 Ill. 93.

Not when more is proved than alleged.

Pennsylvania Co. v. Conlan, 101 Ill. 93.

Objection that evidence varies must be made specifically at trial.

I. & St. L. Ry. Co. v. Estes, 96 Ill. 470.

Variance not shown—kind of train brakeman was working on.

C. & N. W. Ry. Co. v. Jackson, 55 Ill. 492.

**VERDICT.**

Jury—where jury find on each count instead of a general verdict, the effect is a general verdict.

*Eldorado Coal Co. v. Swan*, 227 Ill. 586.

Questions of counsel as to defendant being in Casualty company are improper, but not reversible when verdict is fair.

*Eldorado Coal Co. v. Swan*, 227 Ill. 586.

Cannot be impeached by jurors returning it.

*City of Chicago v. Saldman*, 225 Ill. 625.

Cannot cure fatally defective Narr.

*McAndrews v. C. L. So. E. Ry. Co.*, 222 Ill. 232.

When remittitur will not cure.

*Wabash Ry. Co. v. Billings*, 212 Ill. 37.

Should stand where evidence conflicting.

*C. C. Ry. Co. v. McClain*, 211 Ill. 589.

Clearly sustained by the evidence should not be reversed because of erroneous instruction.

*National E. & S. Co. v. McCorkle*, 219 Ill. 557.

Excess of settled by appellate court.

*C. & J. Elec. Ry. Co. v. Patton*, 219 Ill. 215.

Where the servant and master are sued jointly for the servant's negligence, and the servant is found not guilty the master will not be held.

*Hayes v. Chicago Telephone Co.*, 218 Ill. 414.

Giving blank form of to jury approved.

*The Central Ry. Co. v. Auklewicz*, 213 Ill. 631.

Works an estoppel only after judgment is entered on.

*Spring Valley Coal Co. v. Patting*, 210 Ill. 342.

Reading against "defendant" in action against joint tortfeasors will support a joint judgment.

W. C. St. Ry. Co. v. Home, 197 Ill. 250.

Cannot be impeached by affidavits of jurors or on information from jurors.

Heldmaier v. Rehor, 188 Ill. 458.

Cures defective count—when.

C. & A. R. R. Co. v. Clausen, 173 Ill. 100.

Grace & Hyde Co. v. Sanborn, 225 Ill. 138.

B. & O. S. Ry. Co. v. Keck, 185 Ill. 400.

I. C. R. R. Co. v. Treat, 179 Ill. 576.

Returning sealed by jury is proper, where there is no objection.

B. & O. S. Ry. Co. v. Keck, 185 Ill. 400.

Not void because not specifying the particular count based on.

C. & A. R. R. Co. v. Pearson, 184 Ill. 386.

One good count will sustain.

C. & A. R. R. Co. v. Harbur, 180 Ill. 394.

Objection that verdict is not supported by evidence must be raised at trial.

Sugar Creek Mining Co. v. Peterson, 177 Ill. 324.

Is sufficiently supported where there is a slight preponderance of evidence.

Donley v. Dougherty, 174 Ill. 582.

When defects are cured by.

City of E. Dubuque v. Burlite, 173 Ill. 553.

Consolidated Coal Co. v. Scheiber, 167 Ill. 539.

Cures failure to aver due care by plaintiff.

B. & O. S. W. Ry. Co. v. Then, 159 Ill. 535.

Gerke v. Faucher, 158 Ill. 377.

Findings issues for plaintiff held good.

I. C. R. R. Co. v. Reardon, 157 Ill. 372.

**When defective declaration is cured by.**

**Cribben v. Callaghan, 156 Ill. 549.**

**Libby M. & L. v. Scherman, 146 Ill. 541.**

**Is sustained if one count is good.**

**Cribben v. Callaghan, 156 Ill. 549.**

**What defects are cured by.**

**Helmuth v. Bell, 150 Ill. 263.**

**Cures defective averment of an ordinance.**

**A. T. & S. F. Ry. Co. v. Feehan, 149 Ill. 302.**

**Correcting defect in form of or sending jury back to reform—proper.**

**I. C. R. R. Co. v. Wheeler, 149 Ill. 525.**

**Returning in unsealed envelope—bad.**

**C. C. C. & St. L. Ry. Co. v. Monaghan, 140 Ill. 474.**

**Cures defects subject to special demurrer.**

**L. E. & W. R. R. Co. v. Wills, 140 Ill. 614.**

**Cures ambiguous averment.**

**City of La Salle v. Porterfield, 138 Ill. 114.**

**Does not cure material defect in the declaration.**

**Joliet Steel Co. v. Shields, 134 Ill. 309.**

**Is sustained by proof of one count.**

**C. R. I. & P. Ry. Co. v. Clough, 134 Ill. 486.**

**Pennsylvania Co. v. Backes, 133 Ill. 255.**

**What defects in pleadings are cured by.**

**C. R. I. & P. Ry. Co. v. Clough, 134 Ill. 586.**

**C. & E. I. Ry. Co. v. Hines, 132 Ill. 162.**

**L. S. & M. S. Ry. Co. v. O'Conner, 115 Ill. 255.**

**Proof of enough of declaration to sustain—sufficient.**

**City of Rock Island v. Cuinely, 126 Ill. 408.**

**Verdict should not be set aside unless clearly the result of passion, prejudice or mistake.**

**City of Ottawa v. Sweely, 65 Ill. 434.**

**Verdict may be impeached by affidavit of officer in charge of the jury.**

**I. C. R. R. Co. v. Able, 59 Ill. 131.**

Verdict should stand unless clearly the result of passion or bias.

C. & A. R. R. Co. v. Pondrom, 51 Ill. 333.

Verdict will not be disturbed, although unsatisfactory to court, unless prejudice is apparent.

City of Chicago v. Smith, 48 Ill. 107.

When verdict is against weight of evidence.

C. & A. R. R. Co. v. Gretzner, 46 Ill. 75.

Unless verdict clearly against evidence it should stand.

C. & A. R. R. Co. v. Shannon, 43 Ill. 338.

## VICE PRINCIPAL.

When common laborer may be—workman erecting scaffolding that fell—rule as to.

Schillinger Bros. v. Smith, 225 Ill. 74.

When foreman working with men is.

C. R. I. & P. Ry. Co. v. Rathneau, 225 Ill. 278 (211 Ill. 512 distinguished).

Employe in charge of ventilation of mine held to be.

Wilmington & S. Coal Co. v. Sloan, 225 Ill. 467.

Rule as to who is—foreman of construction gang.

C. & E. I. R. R. Co. v. Kimmel, 221 Ill. 547.

N. C. St. Ry. Co. v. Aufman, 221 Ill. 614.

Foreman held to be.

Springfield Boiler Mfg. Co. v. Parks, 222 Ill. 355.

“Barn boss” of street car barn held to be—sent out defective car.

C. U. T. Co. v. Sawusch, 218 Ill. 130.

When “steel blower” will be held to be.

Ill. Steel Co. v. Ziemkowski, 220 Ill. 324.

Held that motorman is in absence of conductor—passenger thrown down by sudden jerk of car.

C. C. Ry. Co. v. Lowitz, 218 Ill. 26.

Yard master ordering out car from tracks held to be.

C. & E. I. R. R. Co. v. Driscoll, 207 Ill. 9.

Foreman directing men in lifting truck out of hole in floor held to be.

Missouri M. Iron Co. v. Dillon, 206 Ill. 145.

What is evidence of.

Ill. Southern Ry. Co. v. Marshall, 210 Ill. 562.

Slack v. Harris, 200 Ill. 96.

Engineer attempting to repair elevator and directing the operator held to be—operator injured.

*Slack v. Harris*, 200 Ill. 96.

Foreman directing carpenter in the building of a shed that fell because of improper construction—held to be.

*Frost Mfg. Co. v. Smith*, 197 Ill. 253.

When a contractor using defendant's tracks while doing work for defendant is.

*Suburban Ry. Co. v. Balkwill, Admx.*, 195 Ill. 535.

Superintendent of streets is, where he has charge of sewer excavation—city held.

*City of La Salle v. Kostka*, 190 Ill. 131.

When foreman setting machinery in motion is, discussion of doctrine of.

*Norton Bros. v. Nodebak*, 190 Ill. 595.

When foreman acts as, and also as servant—liability of master in such case.

*Met. El. R. R. Co. v. Skola*, 183 Ill. 454.

Not shown—bookkeeper temporarily acting as superintendent.

*Decatur C. M. Co. v. Gogerty*, 180 Ill. 197.

Conductor of train in operating train negligently, held not to be—collision.

*Meyer v. I. C. R. R. Co.*, 177 Ill. 591.

Foreman ordering workman to work near dangerous ore pile, held to be.

*Ill. Steel Co. v. Schymanowski*, 162 Ill. 447.

Starter of cars at street car barn held to be in sending out car with defective driving apparatus.

*W. C. St. Ry. Co. v. Dwyer*, 161 Ill. 482.

Conductor of work train held to be—collision.

*M. & O. R. R. Co. v. Massey*, 152 Ill. 144.

Who is—force of order by to servant.

*Wenona Coal Co. v. Holmquist*, 152 Ill. 581.



When foreman is—defective scaffolding fell.

Goldie v. Werner, 151 Ill. 552.

Gang boss of excavation gang held to be.

Anderson Pressed Brick Co. v. Sobkowiak, 148 Ill. 572.

Who is—rule as to stated.

Libby, McNeill & Libby v. Scherman, 146 Ill. 541.

When foreman making promise to repair is.

Weber Wagon Co. v. Kehl, 139 Ill. 644.

“Pit boss” in mine shown to be.

Consolidated Coal Co. v. Wombacher, 134 Ill. 64.

Who is—rules as to.

C. & A. R. R. Co. v. May, Admx., 108 Ill. 288.

When rule as to applies.

C. B. & Q. Ry. Co. v. Sykes, 96 Ill. 162.

## WITNESSES.

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## a. General Rules as to.

Recalling witness for further cross-examination—discretionary, when not reviewable.

Hirsh & Sons Iron & R. Co. v. Coleman, 227 Ill. 149.

Due diligence in seeking for—what is.

P. C. C. & St. L. R. R. Co. v. Robson, 204 Ill. 254.

Offer of pay to—may be shown.

U. S. Brewing Co. v. Ruddy, 203 Ill. 306.

Physician cannot refuse to be—though not paid extra fee as expert.

N. C. St. Ry. Co. v. Zelger, 182 Ill. 9.

Jury not justified in disregarding testimony of—when—honest mistake or forgetfulness.

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